IN THE

Supreme Court of the United States

OCTOBER TERM, 1969

No. 221

WALTER J. HICKEL, Secretary of the Interior

—v.—

THE OIL SHALE CORPORATION, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

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Relevant Docket Entries

(Oil Shale Corporation, and Energy Resources Technology Land, Inc. v. Walter J. Hickel, Secretary of the Interior, No. 9581)

Date	Proceedings
7/10/64	Complaint filed. Issued 4 summons.
12/ 7/64	Answer filed.
3/28/66	Order on Deft's. Motion for consolidation of No. 8680, No. 8685, No. 8691, and No. 9202.
12/21/66	Memorandum Opinion and Order of District Court filed.
3/ 1/67	Judgment entered.
4/26/67	Notice of Appeal filed by U.S. Attorney.
10/22/67	Record Docketed, Court of Appeal.
7/ 9/68	Argument, and submission of case.
2/ 4/69	Opinion issued, Court of Appeals.
3/12/69	Judgment issued as mandate.

Relevant Docket Entries

(Joseph B. Umpleby, and Wasatch Development Co. v. Walter J. Hickel, Secretary of the Interior, No. 9582)

Date	Proceedings
7/13/64	Complaint filed. Issued 4 summons.
9/11/64	Answer filed.
3/28/66	Order on Deft's. Motion for consolidation of No. 8680, No. 8685, No. 8691, and No. 9202.
12/21/66	Memorandum Opinion and Order of District Court filed.
3/ 1/67	Judgment entered.
4/26/67	Notice of Appeal filed by U.S. Attorney.
10/22/67	Record Docketed, Court of Appeal.
7/ 9/68	Argument, and submission of case.
2/ 4/69	Opinion issued, Court of Appeals.
3/12/69	Judgment issued as mandate.

Relevant Docket Entries

(Barnette T. Napier, et al. v. Walter J. Hickel, Secretary of the Interior, No. 9583)

Date	Proceedings
7/15/64	Complaint filed. Issued 4 summons.
9/11/64	Answer filed.
3/28/66	Order on Deft's. Motion for consolidation of No. 8680, No. 8685, No. 8691, and No. 9202.
12/21/66	Memorandum Opinion and Order of District Court filed.
3/ 1/67	Judgment entered.
4/26/67	Notice of Appeal filed by U.S. Attorney.
10/22/67	Record Docketed, Court of Appeal.
7/ 9/68	Argument, and submission of case.
2/ 4/69	Opinion issued, Court of Appeals.
3/12/69	Judgment issued as mandate.

Relevant Docket Entries

(Penelope Chase Brown, individually and as Trustee, and The Oil Shale Corporation v. Walter J. Hickel, Secretary of the Interior, No. 9584)

Date	Proceedings
6/14/65	Complaint filed. Issued 4 summons.
8/23/65	Answer filed.
3/28/66	Order on Deft's. Motion for consolidation of No. 8680, No. 8685, No. 8691, and No. 9202.
12/21/66	Memorandum Opinion and Order of District Court filed.
3/ 1/67	Judgment entered.
4/26/67	Notice of Appeal filed by U.S. Attorney.
10/22/67	Record Docketed, Court of Appeal.
7/ 9/68	Argument, and submission of case.
2/ 4/69	Opinion issued, Court of Appeals.
3/12/69	Judgment issued as mandate.

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO

Pleas and proceedings before the Honorable Hatfield Chilson, Judge of the United States District Court for the District of Colorado, and the Honorable William E. Doyle, Judge of the United States District Court for the District of Colorado, presiding in the following entitled cause:

THE OIL SHALE CORPORATION, and ENERGY RESOURCES TECHNOLOGY LAND, INC., PLAINTIFFS

vs.

STEWART L. UDALL, Secretary of the Interior, DEFENDANT

No. 8680, Civil

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[1]

COMPLAINT FOR RELIEF IN THE NATURE OF MANDAMUS AND FOR DECLARATORY JUDGMENT

Plaintiffs The Oil Shale Corporation, et al., by their attorneys, for their complaint, allege:

First Claim

1. Plaintiff The Oil Shale Corporation is a corporation duly incorporated under and existing by virtue of the laws of the State of Nevada having its principal office and place of business at 680 Fifth Avenue, New York City, New York. Plaintiff Energy Resources Technology Land, Inc., is a corporation duly incorporated under and existing by virtue of the laws of the State of Colorado having its principal office and place of business at 305 South 39th Street, Boulder, Colorado.

2. The defendant, Stewart L. Udall, here sued in his official capacity, is the duly qualified and acting Secretary of the Interior of the United States, having his official place of business at the seat of the government in

Washington, D. C. Under and by virtue of 9 Stat. 395; 5 U.S.C. § 485; 43 U.S.C. §§ 2,1201; 1950 Reorganization Plan No. 3, 15 F. R. 3174, 64 Stat. 1262, the defendant is charged with the control, direction and supervision of all officers and employees of the Department of [2] the Interior, the administration and enforcement of all laws relating to the public lands and to mining claims thereon, and the issuance of rules and regulations relating thereto.

3. This action arises under the Constitution, more particularly the Fifth Amendment, and the laws of the United States including 30 U.S.C. §§ 22-38, pursuant to which plaintiffs claim vested rights in and to certain oil shale placer mining claims, and involves both the rights of the plaintiffs to enjoy and possess said mining claims without regard to certain unauthorized and invalid Department of the Interior contest proceedings hereinafter set forth, and the duty of the defendant owed to the plaintiffs to administer the laws under which plaintiffs claim said mining claims upon a proper construction of those laws. The matter in controversy, exclusive of interest and costs, exceeds in value the sum of $10,000. The jurisdiction of this Court is invoked under 28 U.S.C. §§ 1331 and 1361.

4. This is an action to obtain an order and a judgment of this Court requiring the defendant to discharge his duties under the mining laws of the United States according to the requirements of those statutes as interpreted by the Supreme Court of the United States, and more particularly, to require the defendant to withdraw and expunge from the records of the Department of the Interior and decisions or judgments in the unauthorized and invalid contest proceedings more fully described hereinafter.

5. Plaintiff Energy Resources Technology Land, Inc., owns the Bute Placer Mining Claims Nos. 1 through 19, both inclusive, Nos. 21 through 28, both inclusive, and Nos. 30, 31 and 32. Plaintiff The Oil Shale Corporation owns the Bute Placer Mining Claims Nos. 33 through 48, both inclusive. Plaintiff Energy Resources Technology Land, Inc., owns the Camp Bird Placer Mining

Claims Nos. 1 through 20, both inclusive, and the Atlas Placer Mining Claims Nos. 1, 2, 3, 7, 9, 10, 12, 17 and 18. Plaintiff The Oil Shale Corporation is the [3] lessee, with an option to purchase, of the foregoing claims owned by Energy Resources Technology Land, Inc. The said Bute Claims are situated in and encompass Sections 7 through 18, both inclusive, of Township 4 South, Range 96 West of the 6th Principal Meridian, with the exception of the Southeast quarter of Section 10 and the Northeast quarter of Section 16. The said Camp Bird Claims are situated in and encompass Sections 2, 3, 4, 9, 16, and the Southeast quarter of Section 17, of Township 4 South, Range 95 West of the 6th P.M., with the exception of the Northeast quarter of Section 2. The said Atlas Claims are situated in and encompass the Northwest quarter of Section 10, the Southwest quarter of Section 12, the West half of Section 13, the East half and Southwest quarter of Section 14, and the South half of Section 15, of Township 4 South, Range 95 West of the 6th P.M. All of the foregoing placer mining claims contain valuable deposits of oil shale and are located in Rio Blanco County, Colorado.

6. In 1927, the defendant's predecessors in office instituted and thereafter conducted Contests Nos. 11,757, 11,759, and 11,761 against the vested rights in and to the mining claims referred to in Paragraph 5 above, owned by plaintiffs' predecessors in interest. The defendant's predecessors in office acted in those contests through subordinate agents, including the Commissioner of the General Land Office and the Register of the Denver Land Office, all of whom were exercising the authority of the defendant's predecessors in office and were subject to their supervision and control at all times. The said contest proceedings were based solely upon the charge that annual assessment work in the amount of $100 had not been performed upon or for the benefit of each of the above mining claims.

7. In initiating and conducting the contests, the [4] subordinate agents purported to act pursuant to Departmental Circular No. 460 "Manner of Proceeding in Contests Initiated Upon a Report by a Representative of the

General Land Office", 44 L.D. 572. The Commissioner and the Register named as contestees in the contests persons they regarded as being the then owners of the mining claims and purported to effect service of contest upon these contestees. In 1928 the Commissioner entered default judgments in Contests Nos. 11,757, 11,759, and 11,761 purporting to declare the mining claims null and void for failure to perform annual assessment work.

8. In the first case brought in the courts to challenge the authority and jurisdiction of the Interior Department to inquire on behalf of the United States whether annual assessment work had been performed for the benefit of a mining claim, the Supreme Court of the United States held in Wilbur v. Krushnic, 280 U.S. 306 (1930), that failure to do annual assessment work did not authorize the defendant's predecessors in office to declare mining claims null and void.

9. On or about June 7, 1930, the defendant's predecessor in office, as a result of the decision in Wilbur v. Krushnic, supra, acknowledged the invalidity and nullity of all prior contests in which the United States had charged only failure to perform assessment work, including Contests Nos. 11,757, 11,759, and 11,761, and instructed his subordinates to renew contest proceedings against the mining claims referred to in Paragraph 5 above.

10. Thereafter, the Commissioner and the Register renewed Contests Nos. 11,757, 11,759, and 11,761. The only difference between the original and the renewed contest proceedings was that in the latter the charge of failure to perform assessment work was expanded to include a charge that performance of assessment work had not been resumed prior to the assertion of challenges to the [5] claims by the defendant's predecessor in office.

11. The Commissioner and the Register prepared new notices of contest, naming as contestees persons they apparently thought owned the above mining claims. The renewed proceedings were also purportedly conducted pursuant to Department Circular No. 460. The Register purported to effect service of notice of contest upon persons he regarded as being the then owners of the mining

claims referred to in Paragraph 5 above, and in 1930 and 1931 the Commissioner from time to time declared that, either to the extent of the interest of the contestees served in Contests Nos. 11,757, 11,759 and 11,761 or in their entirety, the mining claims referred to in Paragraph 5 above were null and void for failure to perform assessment work.

12. In the first case brought in the courts to challenge the authority and jurisdiction of the Interior Department to conduct the renewed contest proceedings, the Supreme Court of the United States in Ickes v. Virginia-Colorado Development Corp., 295 U.S. 639 (1935), held that no charge of failure to perform assessment work, regardless whether performance of the work had been resumed, could serve as a basis for invalidating mining claims, and that the Department's renewed challenges of oil shale claims for failure to perform assessment work, its institution and conduct of contests based on failure to perform assessment work, and its decisions, such as those in Contests Nos. 11,757, 11,759, and 11,761, declaring claims null and void for failure to perform assessment work, went beyond the authority conferred by law upon the defendant's predecessors in office.

13. Following the decision in Ickes v. Virginia-Colorado Development Corp., supra, defendant's predecessor in office decided and declared that all prior decisions declaring mining claims null and void for failure to perform assessment work, including all the [6] decisions in Contests 11,757, 11,759, and 11,761, were null and void and had no effect upon the validity of mining claims. Such decision was publicly evidenced by, among other things, the Department's decision in The Oil Shale Co., 55 I.D. 287 (1935) (annexed as Exhibit A hereto and made a part hereof) overruling all decisions holding the Department had jurisdiction to challenge mining claims for non-performance of assessment work and expressly recalling and vacating the Departmental instructions authorizing the renewal of assessment work contests following the decision in Wilbur v. Krushnic, supra, in 1930. Pursuant to these decisions, Contests 11,757, 11,759, and 11,761 were dismissed and closed adversely to the United States.

14. At no time prior to the termination of Contests Nos. 11,757, 11,759, and 11,761 had any of the owners of the above mining claims or anyone else made application to the defendant's predecessors in office for patents for the claims or for any other interest in the lands covered by the claims. Defendant's predecessors in office and their subordinates were therefore without authority of law to enter upon said contest inquiries into the validity of any mining claims to such lands, and the Commissioner's decisions in Contests Nos. 11,757, 11,759, and 11,761 were and are invalid.

15. The defendant and his predecessors in office have at all times lacked authority to inquire or decide whether assessment work has been performed. Consequently the actions of the defendant and his predecessors in office in instituting the Contests Nos. 11,757, 11,759, and 11,761 and in purporting to cancel the mining claims referred to in Paragraph 5 above for failure to perform assessment work were and are null and void and of no force or effect.

16. At no time during the Contests Nos. 11,757, 11,759, and 11,761 did the defendant's predecessors in office or their agents [7] serve the contestees personally with notice of contest or follow the applicable Departmental procedures for service of notice of contest, which were set out in Circular No. 460. No contestees ever entered an appearance in the contests. At no time did the Department obtain personal jurisdiction over the contestees in the said contests, and the decisions in the said contests were and are of no force and effect.

17. In originally bringing and subsequently renewing Contests Nos. 11,757, 11,759, and 11,761, the defendant's predecessors in office failed and neglected to name as contestees or to effect service upon all of the then owners of the mining claims involved in the said contests. All contestees and all the then co-owners of the said mining claims were indispensable parties without whose presence no valid judgment or decision in said contests affecting said claims could be entered.

18. The Commissioner's decisions, which were based on an erroneous legal premise, became ripe for purposes

of judicial review when the time allowed for appeal to the Secretary expired. Thereupon they became, and are now, subject to judicial correction if in fact they have not already been nullified by administrative action.

19. After Wilbur v. Krushnic, supra, in 1930, and again after the 1935 decision in Ickes v. Virginia-Colorado Development Corp., supra, the defendant's predecessors in office decided that all prior decisions invalidating oil shale claims for failure to perform assessment work, including all the decisions by the Commissioner in Contests Nos. 11,757, 11,759, and 11,761 were null and void and had no effect on such claims.

20. During the period 1935 through 1962, the defendant, his predecessors in office and officials and employees of the Department of the Interior repeatedly and publicly affirmed that [8] the decisions in the assessment work contest proceedings, including Contests Nos. 11,757, 11,-759, and 11,761, were void and of no effect and did not operate to invalidate or otherwise adversely affect the interests of the plaintiffs, their predecessors in interest and others similarly situated.

21. During the period 1935-1962, the defendant and his predecessors in office issued land patents covering at least 74,000 acres of oil shale claims which had been declared null and void in assessment work proceedings such as those here involved and which were in all respects of fact and law the same as the mining claims referred to in Paragraph 5 above, with full knowledge that such contest proceedings had resulted in decisions adverse to the claims, and in recognition of the invalidity of the prior contest proceedings. The Department's consistent practice of issuing patents for oil shale claims which had purportedly been invalidated by assessment work proceedings was widely known throughout the area in which the claims were located, and was known both to the plaintiffs and to their predecessors in interest.

22. By reason of the facts set forth in Paragraph 19, 20, and 21 above, the Department has duly adopted a rule of law, which cannot be retroactively altered, that the assessment work contests, including Contests Nos. 11,757, 11,759 and 11,761, had no effect on the validity of mining claims.

23. From 1935 until 1962, the plaintiffs or their predecessors in interest both knew of and relied upon the consistent policy of the defendant and his predecessors in office of treating the decisions in the original and the renewed assessment work contests, including the decisions in Contests Nos. 11,757, 11,759 and 11,761, as nullities with no force and effect. During that period the defendant and his predecessors, through their authorized subordinates, made repeated representations to the [9] plaintiffs, their predecessors in interests, their representatives, advisers, and neighbors, that the assessment work contests had no effect on the validity of mining claims, and the plaintiffs have justifiably relied upon such representations in the expenditure of time and money in acquiring, improving, and perfecting their rights to the mining claims set out in Paragraph 5 above.

24. On February 16, 1962, the Manager of the Colorado Land Office of the Bureau of Land Management issued decisions rejecting patent applications for mining claims which, while not involved in this Complaint, were subject to contest proceedings prior to 1935 based upon charges identical with those made by defendant's predecessors in office in Contests Nos. 11,757, 11,759 and 11,761. The Manager's decisions for the first time asserted on behalf of the defendant that decisions in the old assessment work contests barred the patenting of the mining claims involved in such contests.

25. On appeal from the Manager's decisions, the Solicitor of the Department of the Interior, acting pursuant to the direction and with the express authorization of the defendant, ruled on April 17, 1964, that, although the decisions in the old contest proceedings were erroneous in law, the defendant would now and in the future assert decisions in the assessment work contests such as Contests Nos. 11,757, 11,759 and 11,761 to bar the patenting of mining claims provided only that notice of contest had been properly served therein.

26. Since 1930 and 1935, the defendant and his predecessors in office have treated the decisions in the old assessment work proceedings identical with Contests Nos. 11,757, 11,759, and 11,761 as nullities. The arbitrary

and unreasonable change of position by the defendant on April 17, 1964, pursuant to which legally erroneous and long overruled decisions in old contest [10] proceedings are now for the first time being asserted to defeat the vested property rights of the plaintiffs, violates the duty owed by the defendant to the plaintiffs fairly and equitably to administer the statutes of the United States relating to public lands and the rules and regulations of the Department of the Interior.

27. The defendant has a duty to the plaintiffs to withdraw and expunge from the Department of the Interior land records the erroneous decisions in Contests Nos. 11,757, 11,759, and 11,761, which purportedly now bar the patenting of the mining claims set out in Paragraph 5 above by the plaintiffs. The resurrection by the defendant and his subordinates of the erroneous decisions in old contest proceedings, including the decisions in Contests Nos. 11,757, 11,759 and 11,761, casts a serious cloud upon the validity of the plaintiffs' mining claims and have directly and adversely affected the vested property rights of the plaintiffs; and the defendant should be restrained from now asserting the validity or effect of the erroneous decisions in Contests Nos. 11,757, 11,759 and 11,761.

Second Claim

28. This is a suit under the Federal Declaratory Judgment Act, 28 U.S.C. § 2201, to obtain a declaration of rights and other legal relations, including a declaratory judgment or decree herein, an order for injunctive relief and for such other and further relief as may be necessary or proper. A case of actual controversy exists between plaintiffs and defendant which is definite, concrete, real and substantial and which touches the legal relations of plaintiffs and defendant. The controversy between the parties concerns the interpretation and the application of the mining laws of the United States, including 30 U.S.C. [11] §§ 22-38, and the validity and effect on plaintiffs' vested rights in oil shale claims of decisions made by the defendant and his predecessors in office and their subordinates in assessment work con-

tests purportedly administering and interpreting said laws. This case of actual controversy admits of an immediate and definitive determination of the legal rights of the parties and admits a specific relief through final decree, as hereinafter more fully appears. The matter in controversy exceeds the sum of $10,000, exclusive of costs. Jurisdiction is conferred on this Court by 28 U.S.C. § 1331.

29. Plaintiffs repeat and reallege each and every allegation of Paragraphs numbered 1, 2 and 5 through 27 of the Complaint with the same force and effect as if they were fully set forth herein.

30. Plaintiffs are subjected to and threatened with an absolute bar, based upon the invalid assessment work decisions in Contests Nos. 11,757, 11,759 and 11,761 as given new effect by the defendant on April 17, 1964, in securing patents to land in which they have vested rights pursuant to the mining laws of the United States.

31. Plaintiffs' property rights in and to such mining claims have been and will continue to be seriously and adversely affected by the defendant's action in asserting that the prior decisions in the assessment work contests, including Contests Nos. 11,757, 11,759, and 11,761, destroyed the mining claims involved therein, including those owned by the plaintiffs.

32. Plaintiffs' injuries, actual and potential, will continue to occur and exist, and the injuries, doubts and uncertainties raised by the defendants' decisions of April 17, 1964, will continue to exist until this Court settles the aforementioned controversy and grants plaintiffs the relief they seek.

[12] 33. The Plaintiffs have no adequate remedy at law.

Wherefore, plaintiffs pray the Court:

1. To issue its mandatory order compelling the defendant to perform the duty owed to the plaintiffs by recalling, vacating, and expunging from the records of the Department of the Interior any decisions, orders, judgments or cancellations entered by the defendant or his predecessors in office or their subordinates in Contests

Nos. 11,757, 11,759, and 11,761 with respect to the mining claims of the plaintiffs.

2. To adjudge that any decisions, orders, judgments or cancellations entered by the defendant or his predecessors in office in Contests Nos. 11,757, 11,759, and 11,761 are erroneous, invalid and of no force or effect on the mining claims involved therein and now owned by the plaintiffs.

3. To adjudge that the defendant be restrained from asserting the validity or effect of the decisions in Contests Nos. 11,757, 11,759, and 11,761 to bar the patenting by the plaintiffs of the mining claims referred to in Paragraph 5 of this complaint.

4. To issue such other restraining orders, temporary injunctions, and permanent injunctions as may be required to protect the statutory and constitutional rights of plaintiffs, preserve the jurisdiction of the Court, and assure the due and fair administration of justice.

5. To grant such other and further relief as the Court deems reasonable, just and proper.

Dated: Denver, Colorado July 10, 1964

Tweedy, Mosley, Sullivan & Young

By John B. Tweedy
Attorneys for Plaintiffs

Cleary, Gottlieb, Steen & Hamilton New York, New York 10005 Of Counsel

Filed July 10, 1964

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[19]

Defendant's Motion To Dismiss

Defendant Stewart L. Udall, Secretary of the Interior, by his attorneys, Lawrence M. Henry, Esquire, United States Attorney, and David Shedroff, Esquire, Assistant United States Attorney, moves the Court as follows:

1. To dismiss the action because the complaint fails to state a claim against defendant upon which relief can be granted.
2. To dismiss the action on the grounds that it is prematurely filed and that plaintiffs have not exhausted their administrative remedies.
3. To dismiss the action on the grounds that defendant has primary authority to determine what conditions bar the patenting of mining claims and this Court has no jurisdiction to grant either declaratory or injunctive relief with respect to the issuance of a mining patent where no application therefor has been submitted to defendant and where legal title to the land remains in the United States.
4. To dismiss the action on the ground that the United States is an indispensable party.

Lawrence M. Henry
United States Attorney

By: David Shedroff
Assistant United States Attorney
Denver, Colorado 80201
Attorney for Defendant

Filed September 30, 1964

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* * * *

[29] ANSWER

Defendant Stewart L. Udall, Secretary of the Interior, by his attorneys, Lawrence M. Henry, United States Attorney, and David I. Shedroff, Assistant United States Attorney, for his answer says:

First Defense

The complaint fails to state a claim upon which relief can be granted.

Second Defense

The United States, a sovereign not amenable to suit, is an indispensable party.

Third Defense

Plaintiffs have failed to exhaust their administrative remedies and lack standing to sue.

Fourth Defense

As a result of notices by the holder of oil and gas leases Colorado 03189-A, 03190-B and 03191-A, published pursuant to Section 7 of the Act of August 13, 1954, 68 Stat. 708, 30 U.S.C. sec. 527, and as a result of the verified statement filed pursuant to the provisions of that Act by Energy Resources Technology Land, Inc., there remains pending in the Department of the Interior a proceeding involving the [30] validity of the so-called unpatented oil shale placer claims designated as Bute Nos. 5 to 8, 13 to 16, 21 to 24 and 30, 31 and 32, all of which are referred to in paragraph 5 of the complaint in this proceeding. The verified statement as to these claims was rejected by the Manager of the Denver Land Office on March 27, 1963, and an appeal was filed by Energy Resources Technology Land, Inc., on April 26, 1963, and that appeal remains pending in the office of the defendant.

Fifth Defense

First Claim

I. Defendant admits the allegations in paragraphs 1 and 2 of the complaint.

II. Defendant is without information sufficient to form a belief with respect to the truth or falsity of the allegation in paragraph 3 that the matter in controversy, exclusive of interest and costs, exceeds the sum of $10,000. The remaining allegations in paragraph 3 and the allegations in paragraph 4 are conclusions of law which require no answer.

III. With respect to the allegations in the first four sentences of paragraph 5, defendant states that the mining claims listed therein, having previously been declared null and void, are no longer capable of ownership. Defendant is without information sufficient to form a belief with respect to the truth or falsity of the allegations in these four sentences. Defendant admits that the claims, when originally located, were situated in the areas described in sentences 5, 6 and 7 of paragraph 5 and that the claims, as originally located, were situated [31] in Rio Blanco County, Colorado. Defendant is without information sufficient to form a belief with respect to the truth or falsity of the allegation that these claims contain valuable deposits of oil shale.

IV. With respect to the allegations in paragraph 6, defendant admits that in 1927 officials of the general Land Office instituted Contests Nos. 11,757, 11,759 and 11,761 wherein the validity of the mining claims described in paragraph 5 of the complaint was challenged on the ground that annual assessment work in the amount of $100 had not been performed. Defendant denies that these claims represented vested rights of the plaintiffs or their predecessors in interest.

V. With respect to the allegations in paragraph 7, defendant admits that the contest proceedings were conducted pursuant to departmental Circular No. 460 by the Commissioner of the General Land Office and that in 1928 default judgments were entered in Contests Nos. 11,757, 11,759 and 11,761 declaring the mining claims

null and void. Defendant is without information sufficient to form a belief with respect to whether the persons named or served in those contests were the persons that the Commissioner and the Register regarded as being the then owners of the mining claims.

VI. With respect to the allegations in paragraph 8, defendant says that the decision of the Supreme Court in Wilbur v. Krushnic, 280 U.S. 306, speaks for itself. Defendant is without information sufficient to form a belief as to the truth or falsity of the allegation that this was the first case.

[32] VII. Defendant denies the allegations in paragraph 9, except the allegation that orders were issued to renew contest proceedings against the mining claims referred to in paragraph 5 of the complaint.

VIII. Defendant admits the allegations in paragraph 10.

IX. With respect to the allegations in paragraph 11, defendant admits that contest proceedings were conducted pursuant to departmental Circular No. 460, admits that service was effected on the owners of the mining claims and admits that in 1930 and 1931 the Commissioner of the General Land Office entered default judgments declaring the mining claims referred to in paragraph 5 of the complaint null and void. Defendant denies the allegations in paragraph 11 not herein specifically admitted.

X. With respect to the allegations in paragraph 12, defendant says that the decision of the Supreme Court in Ickes v. Virginia-Colorado Development Corp., 295 U.S. 639, speaks for itself. Defendant specifically denies that the Supreme Court held in that decision that the contest proceedings therein involved went beyond the jurisdiction of the Department of the Interior although it was held that the contest proceedings had been erroneously decided.

XI. Defendant denies the allegations in paragraph 13 of the complaint.

XII. Defendant admits the allegations in the first sentence of paragraph 14 and denies the allegations in the second sentence of that paragraph.

[33] XIII. Defendant denies the allegations in paragraph 15 of the complaint.

XIV. Defendant denies the allegations in the first and third sentences of paragraph 16 and admits the allegations in the second sentence of that paragraph.

XV. With respect to the allegations in the first sentence of paragraph 17, defendant says that the records of the Department of the Interior indicate that service was made on the contestees in Contests Nos. 11,757, 11,759 and 11,761 and that the known owners of the mining claims were named as contestees. The allegations in the first sentence of paragraph 17 are therefore denied. In his decision in a separate case involving other oil shale mining claims, Union Oil Co. of California, et al., 71 I.D. 169 (1964), defendant has held that questions claimants might wish to raise with respect to the legal adequacy of service in earlier contests will be reviewed upon the filing of a proper application with defendant. Defendant denies the allegations in the second sentence of paragraph 17.

XVI. With respect to the allegations in paragraph 18, defendant says that plaintiffs' alleged predecessors in interest failed to appeal to the Secretary of the Interior within the time permitted by the then existing regulation and thus failed to exhaust their administrative remedies. Defendant denies the allegations in the second sentence of paragraph 18.

XVII. Defendant denies the allegations in paragraph 19 of the complaint.

[34] XVIII. Defendant is without information sufficient to form a belief with respect to the truth or falsity of the allegations in paragraph 20 as they refer to individuals other than the defendant. As applied to the defendant, the allegations in that paragraph are denied.

XIX. As they relate to defendant, the allegations in paragraph 21 are denied. Defendant admits that his predecessors issued some patents based on oil shale placer claims which had previously been declared null and void for failure to perform assessment work. Defendant is without information sufficient to form a belief with respect to the acreage involved in such patents or what

knowledge his predecessors might have had of the contest proceedings. Defendant is without information sufficient to form a belief with respect to the truth or falsity of the allegations in the last sentence of paragraph 21.

XX. Defendant denies the allegations in paragraph 22 of the complaint.

XXI. As they relate to defendant and his authorized subordinates, the allegations in paragraph 23 are denied. Defendant is without information sufficient to form a belief with respect to the truth or falsity of the allegations in this paragraph as they relate to other persons. Defendant notes that despite the length of the complaint it contains no allegation as to the dates on which plaintiffs purchased the alleged interests of the locators or the manner in which they were acquired.

XXII. With respect to the allegations in paragraphs 24 and 25, defendant admits that the so-called Union Oil Co. of California decision, 71 I.D. 169, was announced on April 17, 1964. Defendant says that this decision speaks for itself and any paraphrase thereof in paragraph 25 is denied. Defendant admits that this decision did not involve the mining claims described in paragraph 5 of the complaint. The allegations in the last sentence of paragraph 24 are denied.

[35] XXIII. The allegations in paragraphs 26 and 27 of the complaint are denied.

Second Claim

XXIV. With respect to the allegations in paragraph 28, defendant is without information sufficient to form a belief with respect to the truth or falsity of the allegation that the matter in controversy exceeds the sum of $10,000, exclusive of costs. The remaining allegations in paragraph 28 are conclusions of law which require no answer.

XXV. With respect to the allegations in paragraph 29, defendant adopts his answers to paragraphs 1, 2 and 5 through 27 of the complaint.

XXVI. Defendant denies the allegations in paragraphs 30, 31, 32 and 33 of the complaint.

Sixth Defense

The oil shale placer mining claims referred to in the complaint were originally located in 1920 or earlier years. These claims were held null and void in 1930 and 1931. No action was taken thereafter by plaintiffs' predecessors in title or by plaintiffs to challenge the decisions. In the meantime, the United States, relying on the established invalidity of the claims, entered into oil and gas leases covering much of the area involved and otherwise administered the property as being free and clear of plaintiffs' claims. In view of the foregoing, plaintiffs, under ordinary principles of laches and estoppel, are estopped to maintain the present suit.

Wherefore, defendant demands that the complaint be dismissed.

Lawrence M. Henry
United States Attorney

David I. Shedroff
Assistant United States Attorney

Thomas L. McKevitt
Attorney, Department of Justice
Washington, D. C. 20530
Attorneys for Defendant

Filed December 7, 1964

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[108] DEFENDANT'S PRE-TRIAL STATEMENT

I. Statement Of Facts

This suit involves oil shale claims located on public lands by unnamed individuals on undisclosed dates—presumably prior to 1920. In 1930 and 1931, in Contest numbers 11757, 11759 and 11761, the Commissioner of the then General Land Office declared the claims involved here null and void for failure to perform assessment work or to resume assessment work prior to institution of the contests. No appeals from these decisions were taken to the Secretary of the Interior. The plaintiff Energy Resources Technology Land, Inc., asserting that it is the assignee or successor in interest to the original locators, and the plaintiff Oil Shale Corporation, alleging that it has an option to purchase the "claims," instituted this suit on July 10, 1964, seeking judicial review of the decisions of the Commissioner handed down in 1931 and 1932 declaring the claims null and void. Neither of the plaintiffs has applied to the defendant for issuance of a patent or for review of the decisions of defendant's predecessor.

II. Witnesses

Because this is allegedly a suit to review the 1931 and 1932 decisions of an administrative officer, it is defendant's contention that the suit must be tried on the basis of the administrative record. Accordingly, it is not contemplated that any witnesses will be called on behalf of defendant. However, should the plaintiffs be permitted to submit de novo testimony, the defendant may ask authority to call witnesses to meet such testimony.

III. Documentary Evidence

The burden of submitting the administrative record is on the plaintiffs. However, the defendant will be prepared to submit the following:

[109] 1. The departmental files relating to Contests numbers 11757, 11759 and 11761.

The Court has already directed that additional documents may be designated up to twenty days before trial.

IV. Contentions

Defendant's Statement of Contested Issues.

The defendant does not believe that there are any relevant contested factual issues, other than the issue of plaintiffs' standing to sue. The case involves questions of law. However, the plaintiffs, in their complaint, contend that, after 1935, the decisions declaring the claims void were cancelled. This is denied. Plaintiffs also contend that after the decisions in the Krushnic and Virginia Development cases a number of patents were issued to other parties whose claims had been previously rejected for failure to do assessment work. This is conceded although the number of patents in this category is not known. Plaintiffs also contend that the Department of the Interior developed a policy of conceding that all earlier adjudications declaring claims invalid for failure to do assessment work are null and void. This is denied.

Defendant's Statement of Legal Issues.

1. Whether the Department of the Interior had subject-matter jurisdiction to render the cancellation decisions in Contests numbers 11757, 11759 and 11761.

2. Whether said contest decisions were correct on the merits notwithstanding the decisions in Wilbur v. Krushnic, 280 U. S. 306, and Ickes v. Virginia-Colorado Development Corp., 295 U. S. 639.

3. Whether the plaintiffs are barred by laches and estoppel due to failure of (a) the original owners of the claim to exhaust their administrative remedies in the original contest and failure of (b) the plaintiffs in this action to first exhaust administrative remedies by applying for a patent or otherwise seeking administrative review by the defendant of the earlier decisions of his predecessor. Whether the plaintiffs are barred from main-

taining this action by reason of the applicable Colorado statute of limitations.

[110] 4. Whether the plaintiffs have any interest in the claim and, if so, whether any relief can be obtained going beyond their interest. Defendant recognizes that the question of capacity to sue is normally a threshold question rather than a substantive one. In this case, however, the complaint questions the "assessment work" proceedings per se, and in addition, in paragraph 17 questions service of process in those proceedings. Because of this, and without interfering with the defendant's jurisdiction, within the Department of the Interior, as explained in paragraph 5, infra, defendant is entitled to all information which goes to the propriety of the "paper" title.

5. Whether, even if plaintiffs can establish a title to the claims, the Court is limited to a review of the Secretary's jurisdiction to issue the 1931 and 1932 determinations in the contest proceedings. Defendant contends that this Court could not, in any event, direct the issuance of patents and in so doing pass upon the validity of the claims on grounds that have not as yet been considered by the Department of the Interior. Such matters include the validity of the discovery, the factual issue of abandonment and the proper location of the claims as bona fide association placers.

6. Whether this case can be tried de novo or whether judicial review must be limited to the administrative record before the Department of the Interior.

7. Whether the United States is an indispensable party in all proceedings.

8. Whether, even if some officials of the United States may have publicly announced or acted in a manner which indicated they believed all decisions declaring claims invalid for failure to do assessment work were null and void, such announcements or actions create a rule of

property or constitute an estoppel against the United States. United States v. California, 332 U. S. 19, 39.

Respectfully submitted,

Lawrence M. Henry
United States Attorney for
the District of Colorado.

By David I. Shedroff
Assistant United States
Attorney.
Attorneys for Defendant.

Filed November 8, 1965

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[409] Messrs. Tweedy, Mosley, Aley & Young, Attorneys at Law, * * * Denver, Colorado, for Plaintiffs in Civil Actions Nos. 8680 and 9202. Messrs. Cleary, Gottlieb, Steen & Hamilton, * * * New York, New York, Of Counsel in Civil Actions Nos. 8680 and 9202; Fred M. Winner, Esquire, * * * Denver, Colorado, Of Counsel in Civil Action No. 8680.

Mr. Edward N. Juhan, Attorney at Law, * * * Denver, Colorado, and Mr. Fred M. Winner, Attorney at Law, * * * Denver, Colorado, for Plaintiffs in Civil Action No. 8685.

Messrs. Schmidt and Van Cise, Attorneys at Law, Richard L. Eason, Esquire, * * * Denver, Colorado, for Plaintiffs in Civil Action No. 8691.

Mr. Lawrence M. Henry, United States Attorney for the District of Colorado, * * * Denver, Colorado; Mr. David I. Shedroff, Assistant United States Attorney, Denver, Colorado; Mr. Thomas L. McKevitt, Attorney, Department of Justice, Washington, D. C. for Stewart L. Udall, Secretary of the Interior; Mr. Robert M. Mesch, Attorney, Office of Regional Solicitor, Department of the

Interior, Denver, Colorado, and Mr. Lowell Madsen, Attorney, Office of Regional Solicitor, Department of the Interior, Denver, Colorado, Of Counsel for Defendant in all actions.

MEMORANDUM OPINION AND ORDER

Doyle, Judge.

[410] The four above-named actions arise under the Constitution and laws of the United States. Plaintiffs in all four actions seek an adjudication that certain decisions of the Department of the Interior, hereinafter the Department, regarding oil shale placer mining claims in Colorado are erroneous, invalid and without force and effect. Plaintiffs in Civil Action Nos. 8685, 8691 and 9202 seek mandatory orders to compel the Department to issue patents on several placer claims pursuant to certain applications filed by plaintiffs. Plaintiffs in Civil Action No. 8680 have not filed a patent application, but seek a declaratory judgment regarding their alleged rights to gain patents from the Department on several of the Colorado oil shale mining claims. The trial was to the Court. Extensive trial and post-trial briefs have been filed, voluminous exhibits have been received in evidence, and oral arguments have been presented. The case now stands submitted.

There are few factual disputes. Most of the controversy concerns the policies of the Department and certain Supreme Court decisions relating to extensive oil shale reserves in Colorado, Utah and Wyoming. For the sake of clarity, the position of the plaintiffs in each of the consolidated cases will be summarized at the outset. The specific facts surrounding the claims in the several actions are related so as to clarify the issues and furnish basis for the decisions.

[411] Civil Action No. 8680

Plaintiffs, The Oil Shale Corporation and Energy Resources Technology Corporation, Inc. are, respectively, Nevada and Colorado corporations. Energy Resources allegedly owns certain oil shale mining claims, referred

to as the Group A Bute Claims (officially entitled Bute Placer Mining Claims Nos. 1-19, inclusive, 21-28 inclusive, and 30-32 inclusive). The Oil Shale Corporation allegedly owns the Group B Bute Claims (officially entitled Bute Placer Mining Claims Nos. 33-48, inclusive), the Camp Bird Claims (officially entitled Camp Bird Placer Mining Claims Nos. 1-20, inclusive) and the Atlas Claims (officially, the Atlas Placer Mining Claims Nos. 1, 2, 3, 7, 9, 10, 12, 17, 18). All of these claims are located in Rio Blanco County, Colorado; all allegedly contian valuable oil deposits.

Plaintiffs trace their interests in these claims through one Tell Ertl who, during the 1950's, acquired them from the original claimants and their successors in interest by purchase and forfeiture proceedings under Title 30 U.S.C. § 28. Hamilton v. Ertl, 146 Colo. 80, 360 P. 2d 660 (1961). All of the claims were allegedly located by the original claimants during December, 1919 and January, 1920. Thus they predate enactment of the Mineral Leasing Act of February 25, 1920, 41 Stat. 437, Title 30 U.S.C. § 181, et seq. This act changed the mining law policy in that certain mineral lands were withdrawn from location.

In 1927, the Department instituted certain contest [412] proceedings, Contest Nos. 11,757, 11,759 and 11,761 against the original claimants regarding the above mining claims. On May 4, 1928, the Commissioner, General Land Office, issued letter decisions declaring the claims null and void for the failure of the named contestees to appear upon notice and process purportedly served and answer charges alleging their failure to perform annual assessment work for the years ending July 1, 1921 to 1927, inclusive, as required by 30 U.S.C. § 28.

Plaintiffs contend that the Supreme Court has, on two occasions, held that the Department lacked authority to declare mining claims null and void for failure to perform annual assessment work. Wilbur v. United States ex rel. Krushnic, 280 U.S. 306, 50 S. Ct. 103 (1930); Ickes v. Virginia-Colorado Development Corporation, 295 U.S. 639, 55 S. Ct. 888 (1935). Their further contention is that in any event the contestees were not given proper

notice of the contest proceedings. They allege that following the Supreme Court's divisions in Wilbur v. Krushnic, supra, and Ickes v. Virginia-Colorado Development Corporation, supra, the defendant's predecessors in office and various officials and employees of the Department repeatedly and publicly affirmed that the decisions in the assessment work contest proceedings, including Contests Nos. 11,757, 11,759 and 11,761, were null and void; that from 1935 until 1962, the defendant and his predecessors in office issued land patents covering at least 74,000 acres of oil shale claims which had been declared null and void in assessment work [413] proceedings such as those here involved, and which were in all respects of fact and law the same as the mining claims referred to above in which plaintiffs allege to have an interest. Plaintiffs argue that by reason of these acts the Department has adopted a rule of law, which cannot be retroactively altered, that the assessment work contests had no effect on the validity of mining claims. It is further alleged that the plaintiffs and their predecessors in interest have relied upon the rule of law purportedly adopted by the Department.

In 1962, plaintiff Energy Resources and others applied for patents on certain mining claims which had been the subject of departmental contest proceedings during 1930-1933 involving issues identical to those raised in Contest Nos. 11,757, 11,759 and 11,761. On February 16, 1962, the Manager of the Colorado Land Office, Bureau of Land Management, issued an opinion rejecting the applications on the ground that while the original cancellations may have been erroneous as a matter of law at the time they were made, the principles of finality of administrative action, estoppel by adjudication, and res judicata prevent their now being challenged and consequently bar the patenting of such claims. The Manager's decision was affirmed by the Solicitor of the Department on April 17, 1964. Union Oil Company of California, et al., 71 I.D. 169 (1964). The plaintiffs assert that they have exhausted their administrative remedies and that the case is now ready for judicial review. They seek a mandatory injunction compelling the Department to expunge from Department re- [414] cords any decisions, orders,

judgments or cancellations entered with respect to the mining claims of plaintiffs in Contests Nos. 11,757, 11,759 and 11,761. They also seek a declaratory judgment declaring such contest proceedings to be of no effect, and an injunction barring the Department from relying upon them to bar their patent applications, and any further relief appropriate.

Civil Action No. 8685

Plaintiffs Umpleby, a Texas citizen, and Wasatch Development Company, a Colorado corporation, seek similar relief in regard to certain mining claims in Garfield County, Colorado, known as the Carbon and Elizabeth claims. Plaintiff Umpleby is a successor in interest from the original claimants and the alleged owner of an undivided thirteen and one-half per cent interest in the unpatented Carbon Nos. 1 through 6 and Elizabeth Nos. 1 through 12 oil shale placer mining claims. Plaintiff Wasatch Development Company is a successor in interest from the original claimants and the alleged owner of an undivided eighty-six and one-half percent interest in these claims. The claims were allegedly located in 1918, prior to the enactment of the Mineral Leasing Act.

These claims were also the subject of a contest proceeding, Contest No. 12029, initiated by the Department against Umpleby and others in 1929, in which they were declared invalid for failure to perform annual assessment work. On September 8, 1959, plaintiffs filed application for mineral patent (Colo. 030979) on the Carbon Nos. 1 through 4 and Elizabeth Nos. 1, 2, 4 through 12 claims. [415] In Union Oil Company of California, et al., supra, the Land Office Manager's rejection of this patent application was affirmed by the Solicitor. Plaintiffs make assertions similar to those made by plaintiffs in Civil Action No. 8680. They seek a declaration that the Union Oil Company decision is void because of the Supreme Court's decisions in Wilbur v. Krushnic, supra, and Ickes v. Virginia-Colorado Development Corporation, supra, and the Department's subsequent affirmance thereof, and pray for a mandatory injunction compelling the Depart-

ment to take such action as is necessary to issue patents to them.

Civil Action No. 8691

In this action, plaintiffs Napier and Grace Savage are California citizens, and plaintiffs Joan Savage, M. B. Farnum, Catlin, W. H. Farnum, J. R. Farnum, John Savage and Mincer are Colorado citizens. Plaintiffs are successors in interest and the alleged owners of three oil shale placer mining claims in Garfield County, Colorado, known as the Northwest, Northeast and Southeast claims. These claims were allegedly located by plaintiffs' predecessors in 1918, prior to the enactment of the Mineral Leasing Act. They also were the subject of a contest proceeding, Contest No. 12972, initiated by the Department in 1931, wherein the claims were declared invalid for failure to perform annual assessment work. On June 1, 1959, the plaintiffs applied for a patent on the claims involved here. This application was also rejected by the Manager of the Colorado Land Office and affirmed by the Solicitor, Union Oil Company of Cali- [416] fornia, et al., supra. Plaintiffs also contend that this decision is contrary to law and the settled practice of the Department. They seek a mandatory injunction compelling the Department to take such action as is necessary to issue the patents applied for, and a judgment declaring the departmental decisions adversely affecting their claims to be null and void, and other appropriate relief.

Civil Action No. 9202

Plaintiff Brown is a Colorado citizen, and is the successor in interest and the alleged owner of certain oil shale placer mining claims in Garfield County, Colorado, known as the Oyler claims (officially the Oyler Oil Shale Placer Mining Claims Nos. 1-4). Plaintiff The Oil Shale Corporation is a Nevada corporation holding a lease and option to purchase the Oyler claims. The Oyler claims were allegedly located in 1916, prior to the enactment of the Mineral Leasing Act. They too were the subject of departmental investigations and contest proceedings prior

to the Supreme Court's decision in Ickes v. Virginia-Colorado Development Corporation, supra. The Department concluded from an investigation in 1918 that the claims had been properly located. A second investigation in 1920 affirmed the continued validity of the claims. In 1929, a contest proceeding, Contest No. 12039, similar to those discussed above, resulted in a declaration invalidating the claims for failure to perform annual assessment work. In 1948, the sole surviving directors of the then [417] record title holder of the claims, the Index Shale Oil Company, a dissolved corporation, conveyed the claims to plaintiff Brown and her husband. In 1955, the Browns conveyed the claims to the Pacific Oil Company, which filed a patent application in September of the same year, Colorado No. 012327. This application was also rejected by the Manager of the Colorado Land Office on February 16, 1962, and affirmed by the Solicitor in Union Oil Company of California, et al., supra. Apparently as a result of the Land Office Manager's decision in 1962, the Pacific Oil Company reconveyed the claims to plaintiff Brown. The lease-option agreement with plaintiff The Oil Shale Corporation was executed thereafter. Plaintiffs here make the same assertions and seek similar relief to that asked by plaintiffs in Civil Action No. 8680.

In summary, the plaintiffs assert at least three separate and independent reasons for according the relief sought in these consolidated actions:

1. The 1928-1933 contest proceedings of the Department are void for lack of jurisdiction and can give no basis for the Union Oil decision on any theory.

2. In 1935, the Department adopted a rule that the 1928-1933 contest decisions would be regarded as void and without force and effect and this rule cannot be reversed retroactively.

3. Even if the 1928-1933 decisions are regarded as merely erroneous, but supported by subject matter jurisdiction, the plaintiffs in the circumstances above described can now seek direct review and obtain their reversal.

[418]

The Assessment Work Issue: Departmental View Prior to the Krushnic and Virginia-Colorado Decision

The Department's broad power over the public lands gives it an undisputed jurisdiction over most aspects relating to the validity of mining claims, e.g., marking of claims, discovery, mineral character of the land, particularly when a patent application has been filed. Cameron v. United States, 252 U.S. 450, 40 S.Ct. 410 (1920); Best v. Humboldt Placer Mining Company, 371 U.S. 334, 83 S.Ct. 379 (1963). In view of the scope of its acknowledged powers, the Department has, in recent decades, been reluctant to accept the proposition that it lacks power to question the sufficiency of assessment work performance in order to take possession of claims for the Government where such work is in default.[1] Under the mining laws, the penalty for failure to do assessment work traditionally has been that other private parties are empowered to enter onto the lands and relocate the claim. E.g., Belk v. Meagher, 104 U.S. 279, 26 L.Ed. 736 [419] (1881); Swanson v. Sears, 229 U.S. 180, 32 S. Ct. 455 (1912); Knight v. Flat Top Mining Co., 6 Utah 2d 51, 305 P.2d 503 (1957). Where there are co-owners to a mining claim, one co-owner can, by performing assessment work where the others do not, obtain complete ownership of the claim through forfeiture proceedings under 30 U.S.C.A. § 28. Hamilton v. Ertl, supra. In recent years, the Department has asserted its thesis that relo-

[1] That a distinction has been made between the Department's power to invalidate claims for non-performance of assessment work and its power to do so for other defects is illustrated by the following extract from The Federal Shale Oil Company, 53 I.D. 213, 216 (1930):

"Putting aside for the moment the question, whether departmental authority exists to attack mining claims for failure to do annual work, it can not be disputed that such authority exists to determine whether a valid claim was initiated prior to the date of the act by doing the acts the mining law prescribed, such as marking the boundaries so that they might be readily traced, making a discovery of mineral prior to the act, or thereafter as a result of work diligently in prosecution at its date.

cation for assessment work default is also a remedy available to the Government, and within its jurisdiction. But this has not always been its position.

In an early decision, P. Wolenberg, et al., 29 L.D. 302 (1899), the Secretary of the Interior recognized that the Department had no jurisdiction under the pre-Mineral Leasing Act mining laws to inquire into a charge of failure to perform assessment work. The Secretary reviewed the action of the Land Office Commissioner in ordering a hearing to determine whether annual assessment work had been performed on a contested claim. In vacating the order for a hearing on this question the Secretary made the following comments:

"Ordinarily an order of your office directing a hearing, being an interlocutory proceeding, will not be disturbed upon appeal. Indeed, generally speaking, such an order is not appealable. This rule, however, is not without exception, and where it is made to appear that the order involves matters which the land department can not inquire into. . . the same may be considered and corrected or wholly vacated when brought to the attention of the Department, whether by direct appeal or otherwise.

"In the present case the order for a hearing, in so far as it directs an inquiry into the charge of failure to make an expenditure of one [420] hundred dollars, in labor or improvements, on the Mascot claim during the year 1896, and the alleged relocation of the claim by reason thereof, clearly relates to matters over which the land department is without authority. The annual expenditure of one hundred dollars, in labor or improvements, required by section 2324 of the Revised Statutes, is solely a matter between rival and adverse claimants to the same mineral land, and goes only to the right of possession, the determination of which is committed to the courts, and not to the land department. In this respect the requirement made by section 2324 is essentially different from that made by section 2325, which makes the expenditure of five hundred dollars, in labor or improvements, a condition to the issuance of patent, and therefore a matter between the applicant for patent and the

Government, the determination of which is committed to the land department. * * *

"The action of your office in ordering a hearing to determine whether the annual assessment work for 1896 had been done upon the Mascot, and, if not, whether work upon that claim had been resumed before the alleged relocation thereof, was erroneous." 29 L.D. at 303-04.

See also Barklage et al. v. Russell, 29 L.D. 401 (1900); Nielson v. Champagne Mining & Milling Co., 29 L.D. 491 (1900); Cain et al. v. Addenda Mining Co. (On Review), 29 L.D. 62 (1899).

Following these early decisions the Department took a different view in cases involving the right of mining claimants to lands subsequently withdrawn or reserved from mining locations. Thus, in Navajo Indian Reservation, 30 L.D. 515 (1901), the Department held that a valid mining location subsisting at the time of the reservation of lands as an Indian Reservation was excepted from the effect of the withdrwal and that such claim was subject to relocation upon failure of the original claimant to perform annual assessment work. The Secretary refused to determine whether the original [421] locators had defaults, and whether the alleged relocators had succeeded to their rights, holding this to be a matter for the courts. However, he did consider the effect of the withdrawal upon the subsequent default of prior claims. Depending upon how the reservation was worded, the Secretary concluded, it might attach upon default of an existing claim so as to prevent relocation or it might never attach, regardless of the subsequent default. If, for example, the reservation did not flatly exclude the prior claims, but merely exempted them for so long as they are properly "maintained," a default in such "maintenance" would bring the land under the withdrawal and hence under the control of the Government.

The effect of a withdrawal under the reclamation act for irrigation works, 32 Stat. 388, was considered in a Departmental Instruction dated January 13, 1904, 32 L.D. 387. The Secretary noted that an unperfected mining claim is merely a possessory right which is liable to be divested for failure to maintain the claim in accord-

ance with the mining laws and local regulations applicable thereto. He then stated that the land department has jurisdiction to determine whether the claimant has defaulted and to declare by its judgment whether such right has been divested so as to restore the land to the control of the Government. A decade later, in E. C. Kinney, 44 L.D. 580 (1916), this principle was followed to support the asserted jurisdiction of the Department to determine whether placer mining claims on withdrawn lands were subsequently defaulted for failure [422] to perform annual assessment work. In referring to the January 13, 1904, Instruction, the Assistant Secretary said:

"This is undoubtedly the true rule, for where a claimant is in default so that his claim could be defeated by another individual adverse claimant, surely the Government, desiring to devote the land to an important public use, may likewise take advantage of the default and divest the claim so as to free the land for Government use." 44 L.D. at 582.

As has been mentioned, the Mineral Leasing Act of 1920 instituted a new policy with respect to certain minerals, including oil shale, by withdrawing them from location and patent. After its enactment, many prior locators ceased doing annual assessment work on claims for minerals included under the Act on the ground that if such claims could no longer be located, neither could they be relocated. An investigation by the Department after the enactment of the Leasing Act showed that work had stopped on many claims. Many contests were initiated alleging that failure to perform the work resulted in forfeiture of the claims to the United States. In bringing these contest proceedings the Department took the position that its jurisdiction to inquire into the validity of mining claims was enhanced by the new policy propounded by the Act. The Department reasoned that the provision of Section 37 of the Act, excepting from its coverage valid existing claims thereafter "maintained in compliance with the laws under which initiated," impliedly gave the Secretary the authority to determine what lands are subject to lease and what lands are within

the exception of valid claims. In the Department's [423] view, maintenance "in compliance with the laws under which initiated" included the performance of annual assessment work; hence, the Secretary's implied authority to determine what claims fell within the exception necessarily gave him jurisdiction to invalidate claims for nonperformance of such work.

The Supreme Court Decisions

The leading Department case enunciating this viewpoint was Emil L. Krushnic, 52 L.D. 295 (1929). There, the petitioner's application in 1922 for patent to certain oil shale placer claims was denied for failure to perform assessment work during 1920, although he had resumed such work in 1921 and 1922. The Commissioner ruled that to maintain a claim "in compliance with the laws under which initiated means, among other things, the performance of $100 worth of annual labor and improvement prescribed by section 2324, Revised Statutes . . .," and that failure to fulfill this requirement automatically terminated the claim and rendered it subject to disposition only under the leasing act. In affirming the Commissioner the Secretary emphasized the automatic nature of the termination upon default in performing the yearly labor.

"Section 37 [of the Leasing Act] at one blow destroyed the right of relocation of such minerals and with it fell the right of resumption. * * * The fair and obvious meaning of section 37 is that if the annual work is not done, all the rights of the claimant are gone."

* * * *

"The contention that the Federal Government must act the part of an adverse claimant in this [424] and similar cases and be alert and vigilant and take some affirmative action to terminate the rights of a defaulting claimant before he resumes work, such as by physical reentry, or institution of adverse proceedings in the department or by bringing an ouster suit in the courts, is untenable." 52 L.D. at 297, 301-03.

Since he viewed the forfeiture to be automatic, immediately vesting the Government with complete control and ownership of the land, the Secretary was able to distinguish between the Department's jurisdiction under the general mining laws to settle disputes over assessment work performance between private adverse claimants and its jurisdiction under the Leasing Act to invalidate claims on its own initiative for failure to perform the annual labor.

"The situation here is entirely different. The leasing act, as stated, repealed as to shale deposits the general provisions of the mining law and withdrew them from location and disposition thereunder and was a legislative assertion of control and ownership thereof by the United States, except as specifically provided in section 37 of the act. It is the duty of the department to scrutinize claims that are asserted to be within the exceptions and ascertain whether the government or the individual has the better right. The question is one of validity, and under section 37 maintenance is an essential element of validity. Only controversies between adverse claimants under conflicting mining locations of the same land, and which relate solely to the right of possession are committed exclusively to the courts. . . ." 52 L.D. at 303.

Following this ruling in Krushnic the land office instituted numerous assessment work contests. Annual Report of the Secretary of the Interior, Fiscal Year 1928, page 11. Included in these proceedings were Contest Nos. 11757, 11759, 11761, 12029 and 12039, regarding the placer claims in Civil Actions Nos. 8680, 8685 and 9202. Meanwhile, however, Krushnic found its [425] way to the Supreme Court. The decision of the Department was there reversed. The Supreme Court ruled that the Secretary's decision that cessation of assessment work automatically terminates the claim "violates the plain words of the excepting clause of the Leasing Act." Wilbur v. United States ex rel. Krushnic, supra, 280 U.S. at 318, 50 S.Ct. at 105. The reasoning was that while performance of annual labor "maintains" a claim,

"the owner equally maintains his claim, within the meaning of the Leasing Act, by a resumption of work,

unless at least some form of challenge on behalf of the United States to the valid existence of the claim has intervened . . ." 280 U.S. at 317-18, 50 S.Ct. at 105.

Failure to perform assessment work on a claim located prior to the leasing act, the court concluded, only renders it subject to loss by relocation and is without effect so far as the Government is concerned.

"The owner [of a mining claim]i s not required to purchase the claim or secure patent from the United States; but, so long as he complies with the provisions of the mining laws, his possessory right, for all practical purposes of ownership, is as good as though secured by patent. While he is required to perform labor of the value of $100 annually, a failure to do so does not ipso facto forfeit the claim, but only renders it subject to loss by relocation. And the law is clear that no relocation can be made if work be resumed after default and before such relocation.

"Prior to the passage of the Leasing Act, annual performance of labor was not necessary to preserve the possessory right, with all the incidents of ownership above stated, as against the United States, but only as against subsequent relocators. So far as the Government was concerned, failure to do assessment work for any year was without effect. Whenever $500 worth of labor in the aggregate had been performed, other requirements aside, the owner became entitled to a patent, even though in some years annual assessment labor had been omitted. P. Wolenberg, et al., 29 L.D. 302, 304; Nielsen v. Champagne Mining & M. Co., 29 L.D. 491, 493. 280 U.S. at 317, 50 S.Ct. at 104-05.

[426] The decision in Krushnic did not put at rest the problem of jurisdiction, at least not for the Department. The Department's interpretation was that it prohibited the Government's invalidating mining claims for failure to perform assessment work only where the claimant has resumed the assessment work before "some form of challenge on behalf of the United States to the valid existence of the claim has intervened." [2] The Department then un-

[2] The Federal Shale Oil Co., 53 I.D. 213, 220 (1930). See also, Francis D. Weaver, 53 I.D. 175 (1930), On Rehearing, 53 I.D. 179

dertook to investigate the validity of oil shale claims upon which assessment work had stopped and had not been resumed. It posted a notice on each such claim. This declared that the United States had taken possession of the land for its exclusive use and benefit. Numerous such notices were posted; many contest proceedings were instituted; and many claims covering hundreds of thousands of acres were declared null and void. Annual Report of the Secretary of the Interior, Fiscal Years 1930, p. 14; 1931, p. 65; 1932, pp. 18, 58; 1933, p. 60.

"It is the department's view that a challenge of an oil shale claim which is in default for the nonperformance of assessment work, by notice of the preferment of a charge against the claim to that effect in a proceeding instituted in accordance with the regulations of February 26, 1916, Circular No. 460 (44 L.D. 572), while such default continues to exist, and a judgment by the department that the charge is sustained after due notice and opportunity to be heard, has the same effect in the extinguishment of the claim as would a valid relocation of a mining claim located on account of minerals other than those mentioned in the leasing act." The Federal Shale Oil Company, supra, 53 I.D. at 221.

[427] On April 1, 1933, the Department suspended these actions to await "court decisions on [the] jurisdiction of the Department to challenge the validity of oil shale locations for failure to perform annual labor thereon." Annual Report of the Secretary of the Interior, Fiscal Year 1934, p. 65. The litigation referred to was culminated in the Supreme Court's decision in Ickes v. Virginia-Colorado Development Corporation, supra.

In Virginia-Colorado, the Court reviewed a decree requiring the Secretary of the Interior to vacate certain adverse proceedings together with his decision declaring certain placer claims of the plaintiff in that case to be void. Plaintiff had alleged that he had located oil shale placer claims on mineral lands of the United States in

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(1930); Virginia-Colorado Development Corporation, 53 I.D. 666 (1932); State v. Madell, 53 I.D. 195 (1930); Instructions, Government Proceedings Against Oil Shale Claims for Default in Assessment Work, 53 I.D. 131 (1930).

Colorado in June 1917. Annual assessment work had been performed for each year through July 1, 1930, but none had been done during 1931 when the Department initiated adverse proceedings challenging the claim for nonperformance of the work and failure to resume prior to the contest proceedings.

The Supreme Court affirmed this decree and in so doing the opinion by Mr. Justice Hughes, declared and clarified several points.

First, the decision reaffirmed the holding in Krushnic as to the character of the right acquired. On this it quoted:

[428] "... Restating the rule declared by many decisions, we said in Wilbur v. U.S. ex rel. Krushnic, 280 U.S. 306, 316, 50 S.Ct. 103, 104, 74 L.Ed. 445, that such a location, perfected under the law, 'has the effect of a grant by the United States of the right of present and exclusive possession. The claim is property in the fullest sense of that term.' It is alienable, inheritable, and taxable."

Secondly, it again spelled out the extent of the Department's authority as follows:

"There was authority in the Secretary of the Interior, by appropriate proceedings, to determine that a claim was invalid for lack of discovery, fraud, or other defect, or that it was subject to cancellation by reason of abandonment. [Citing cases]

"The Leasing Act of 1920 inaugurated a new policy. Instead of the acquisition of rights by location, the act provided for leases. But by express provision, the act saved existing valid claims 'thereafter maintained in compliance with the laws under which initiated, which claims may be perfected under such laws.' Section 37 of the act (30 USCA § 193). What then was the status of plaintiff's claims under this exception? They were originally valid claims. No question is raised to the contrary. There is no suggestion of lack of discovery, fraud, or other defect. There is no ground for a charge of abandonment. The allegations of the bill, admitted by the motion to dismiss, dispose of any such contention. Plaintiff had lost no rights by failure to do the annual assessment

work; that failure gave the government no ground of forfeiture. Wilbur v. U.S. ex rel. Krushnic, supra."

Thirdly, it was held that the Saving Clause (Section 37 of the Leasing Act) preserved all rights acquired prior to the enactment of the act, and that the reservation did not enlarge the Department's authority. On this it said:

"In this view, plaintiff came directly within the exception. The government invokes the new policy of the Leasing Act abolishing the practice of location. But the saving provision of section 37 is a part of the policy of the act. Its terms explicitly declare the will of Congress as to valid existing claims, with full understanding of the status of such claims under the prior law.

[429] "The government refers to the reservation in the opinion in Wilbur v. U. S. ex rel. Krushnic, supra, as to the maintenance of a claim by a resumption of work 'unless at least some form of challenge on behalf of the United States to the valid existence of the claim has intervened.' But that was a reservation, not a decision, and it does not aid the government in its contention here. To be effective, the 'challenge' to the 'valid existence' of a claim must have some proper basis. No such basis is shown.

The Court's conclusion was that "the Department's challenge, its adverse proceedings, and the decision set forth in the bill went beyond the authority conferred by law."

Soon after the decision of the Supreme Court in Virgina-Colorado, the Department issued its opinion in The Shale Oil Company, 55 I.D. 287 (1935). This in a sense implemented the Supreme Court's ruling. The appeal to the Secretary was from a Commissioner's denial of patent application. The contention was that the Land Department was without jurisdiction and without legal authority to question a placer claim owner's failure to perform assessment work for any year. The First Assistant Secretary reversed the decision and remanded the case with instructions to reinstate the application and to dispose of it unaffected by default in the performance of assessment labor. In commenting on the Virginia-Colorado opinion the Assistant Secretary noted that "the chal-

lenge to the valid existence of the claims had no proper basis; and that the Department's challenge, its adverse proceedings and the decision set forth in the Bill went beyond the authority conferred by law."

The Assistant Secretary went even further; he con- [430] cluded that: "The above-mentioned decisions in the cases of Francis D. Weaver and Federal Oil Shale Company and other departmental decisions in conflict with this decision are hereby overruled."

Thus, the Department not only clearly recognized its lack of authority to deal with the assessment work problem in the case before it, but also it cleared the record by overruling all prior inconsistent decisions.

There are other evidences that this was and continued to be the viewpoint of the Department many, many years following the Virginia-Colorado decisions. The viewpoints of various officials, reflected in the correspondence, show that they believed that prior decisions forfeiting claims for failure to do assessment work were void.[3]

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[3] Letter of Secretary Lane dated October 23, 1918:

"I am in receipt of your letter dated October 2, 1918, and making inquiry as to the necessity for performing annual assessment work on some oil shale lands in Wyoming, which you and associates are claiming under placer mining locations made in 1917 and 1918.

* * * *

"As a general rule matters involving questions of assessment work on mining claims arise between adverse claimants to the same mineral land and go only to the right of possession, the determination of which is committed exclusively to the courts."

Letter of First Assistant Secretary Vogelsang dated January 20, 1919:

"The annual expenditure on unpatented mining location required under Section 2324 U.S. Revised Statutes, and commonly called annual assessment work, is, with the exception of certain phosphate locations affected by a special act of Congress, solely a matter between rival or adverse claimants to the same mineral land, and goes only to the right of possession, the determination of which is committed exclusively to the courts. In other words, the nonperformance of assessment work renders the land subject to adverse relocation provided work is not resumed (40 Stat. 343).

Letter from Commissioner Fred W. Johnson dated June 28, 1935:

"It is possible if you left your claims in 1925 and have not since performed assessment work thereon that they have been relocated,

[431] The regulations governing the Bureau of Land Management recognize this proposition also. See 43 C.F.R. § 3420.4 (1966). It provides:

"The annual expenditure of $100 in labor or improvements on a mining claim, required by section 2324 of the Revised Statutes (30 U.S.C. § 28), is, with the exception of certain phosphate placer locations, validated by the act of January 11, 1915 (38 Stat. 792; 30 U.S.C. 131), under which regulations were issued March 31, 1915 (Circ. 396), 44 L.D. 46, solely a matter between rival or adverse claimants to the same mineral land, and goes only to the right of possession, the determination of which is committed exclusively to the courts." [4]

[432] Similarly, the annual reports of the Secretary of the Interior also reflected the Department's view in this

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but as also stated in the paragraph referred to, 'The determination of the question of the right of possession between rival or adverse claimants to the same mineral land is committed exclusively to the court.' Matters of trespass, thievery, etc., such as those referred to in your letter, are also committed to the jurisdiction of the court, being punishable only under the laws of the state,. As this office has no jurisdiction in the matters mentioned in your letter it will not undertake to advise you in that regard."

Letter from Commissioner Johnson dated July 25, 1935:

"Replying to your letter of July 20, 1935, you are advised that this office has no jurisdiction over questions relating to the performance of annual assessment work on mining claims, such questions being committed exclusively to the courts."

Letter from Under Secretary Chapman dated February 11, 1946:

"The failure to perform the annual assessment work for the benefit of a valid mining location has no effect as against the United States but only renders the claim subject to loss through relocation by another claimant if the work is not commenced or resumed before such relocation. Therefore, the question of whether the work done is of a nature that would be considered assessment work is not one within the jurisdiction of this Department but is for the appropriate court to determine should litigation arise between the claim holder and another claimant making a relocation of the same ground. See Ickes v. Virginia-Colorado Development Corp., 295 U.S. 639.

See also, The Shale Oil Company, supra, pp. 20-21.

[4] See also 37 L.D. 757, 769 (1909); 49 L.D. 15, 73 (1922) showing similar versions of the quoted regulation.

regard.[5] Moreover, the commentators have generally regarded the question as one of jurisdiction.[6]

Union Oil Company Decision

We turn now to consideration of the case which marked a reversal of the Department's viewpoint and attitude. In Union Oil a number of applicants for patents to oil shale placer mining claims which had been declared null and void in the contest proceedings during 1930-1933 sought to have patents issue. The Manager [433] of the Land Office denied these efforts. The Secretary, in his exercise of supervisory jurisdiction, submitted the case to the Solicitor of the Department for final decision. The Manager's decision was, of course, affirmed notwithstanding that the Solicitor recognized the invalidity of the 1930-1933 rulings. He noted that failure to perform annual assessment work was not a ground for cancellation of oil shale placer claims by the Government. 71 I.D. at 170. He held, however, that even though the original cancellations were incorrect in law, that nevertheless under the principles of finality of administrative action, estoppel by adjudication, and res judicata, these rulings could not be challenged in the year 1962.

The Solicitor's basic assumption in the Union Oil decision was that the Supreme Court had not denied the De-

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[5] See Report of the Secretary of the Interior, Fiscal Year 1934, page 65, and see also the Statement of Secretary Wilbur before the Senate Committee on Public Lands, given on February 12, 1931.

[6] E.g.:

"Assessment work upon oil-shale claims is governed by the rules of the general mining law and the claimant of a valid location prior in time to the passage of the Leasing Act is not subject to any forfeiture that did not apply to such law. In other words, fulfillment of the annual ownership work each year is not a prerequisite to continuing ownership as against the Government of the United States, and, in the absence of an adverse relocation, work may be resumed at any time." Division of Mines, California Department of Natural Resources, American Mining Law, Vol. 1, § 1051 (1943);

"Only a mining relocation can affect forfeiture, and the Federal Government cannot question the failure to perform assessment work." 2 American Law of Mining, § 7.26 (1964).

partment's jurisdiction with respect to the subject matter. He also construed The Shale Oil Company case, supra, which had overruled all inconsistent decisions, as not reinstating the claims previously declared forfeited. In essence, he determined that the applicants were required to take action to nullify these rulings at the time and that their failure to exercise this initiative constituted something in the nature of an implied acquiescence. The important emphasis in the decision was placed on administrative finality and res judicata. Since this decision stands [434] in the way of a recognition of the plaintiffs' rights, we must consider and determine its validity in the light of the Supreme Court decisions and the narrow question is whether the Department had subject matter jurisdiction with respect to performance or nonperformance of assessment work. In support of his holding that there was such jurisdiction, the Solicitor pointed to the language in Virginia-Colorado to the effect that the Secretary had authority by appropriate proceedings to determine that a claim was invalid for lack of discovery, fraud, or other defect, or that it was subject to cancellation by reason of abandonment. From this he concluded that the Department at all times retained jurisdiction; that is, power over these claims. As we view it, this was an unjustified interpretation of the decisions of the Supreme Court. It overlooked the basic nature in terms of property of a mining location. Both Krushnic and Virginia-Colorado proceeded on a fundamental proposition that this creates a vested property right which can be defeated only by a competitor. Historically, this was the nature and character of the mining claim, and to overlook it is to change a fundamental rule of property. No amount of administrative legerdemain can overcome this fundamental principle.

It is, of course, so fundamental as to require no documentation, that an adjudication by a tribunal lacking subject matter jurisdiction is wholly nugatory, need not be appealed, and can not be res judicata. When, as here, the Department acted beyond the authority granted to it by the law, it acted in the particular [435] area beyond its jurisdiction. The Supreme Court told the Depart-

ment this in language as plain as legal language can be. If Krushnic left some unresolved question, Virginia-Colorado did not. It is clear from a reading of this opinion that the Court was speaking on the question of the Department's jurisdiction. As to pre-1920 locations, the Court held that they retained the legal status which they had enjoyed prior to the adoption of the Leasing Act. Both of these cases rule that prior to the adoption of this Act the performance of assessment work was unnecessary to the preservation of the locator's possessory right against the Government.

Virginia-Colorado clarified beyond question the proposition that the Government has never had a possessory right to pre-Leasing Act mining claims defective only for failure to perform assessment work. It follows from this that the Department is wholly without jurisdiction to inquire into the status of assessment work performance.

It is also noteworthy that there has been no contention here that plaintiffs have abandoned their claims and there is a dearth of evidence to establish acquiescence, express or implied, by plaintiffs in any assumption of jurisdiction by the Department.

It follows, therefore, that the decision in Union Oil is contrary to and irreconcilable with the decisions of the Supreme Court of the United States. In so holding we recognize that the Department of the [436] Interior is in good faith advancing a policy. Congress has, of course, granted the Department broad powers to protect public lands and the Department undoubtedly considers itself duty-bound to oppose the instant claims. This Court, however, must follow the law as laid down by the Supreme Court of the United States. It is upon this basis that we conclude that the actions of the Department in assuming jurisdiction over the failure to do assessment work is void and of no effect whatever.

The plaintiffs are directed to submit forms of judgments reflecting the views expressed in this opinion. These judgments should be submitted to defendant for approval as to form.

Dated at Denver, Colorado, this Twenty-first day of December, A. D. 1966.

By The Court:

William E. Doyle, Judge
United States District Court

Filed December 21, 1966

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* * * *

[439] JUDGMENT

This action came on for trial before the Court, Honorable William E. Doyle, District Judge, presiding, and the issues having been duly tried and a decision having been duly rendered,

It is Ordered and Adjudged:

1. That the decisions of the Commissioner of the General Land Office in Contest 11757 dated May 4, 1928, July 3, 1931 and November 3, 1931, and any other decision in that contest, purporting to declare the Bute Placer Mining Claims Nos. 1-19 inclusive, 21-28 inclusive, and 30-48 inclusive null and void for failure to perform annual assessment work, were and are void, invalid and of no force or effect whatever upon the validity of the aforesaid Bute Claims or of any interest or interests in said claims or any of them. In the location certificates the aforesaid Bute Claims are described as comprising the following portions of Township 4 South, Range 96 West of the Sixth Principal Meridian, in Rio Blanco County, Colorado:

[440]

Bute No. 1 Section 12, northeast quarter
Bute No. 2 Section 12, northwest quarter
Bute No. 3 Section 12, southeast quarter
Bute No. 4 Section 12, southwest quarter

Bute No. 5 Section 13, northeast quarter
Bute No. 6 Section 13, northwest quarter
Bute No. 7 Section 13, southeast quarter
Bute No. 8 Section 13, southwest quarter
Bute No. 9 Section 11, northeast quarter
Bute No. 10 Section 11, northwest quarter
Bute No. 11 Section 11, southeast quarter
Bute No. 12 Section 11, southwest quarter
Bute No. 13 Section 14, northeast quarter
Bute No. 14 Section 14, northwest quarter
Bute No. 15 Section 14, southeast quarter
Bute No. 16 Section 14, southwest quarter
Bute No. 17 Section 10, northeast quarter
Bute No. 18 Section 10, northwest quarter
Bute No. 19 Section 10, southeast quarter
Bute No. 21 Section 15, northeast quarter
Bute No. 22 Section 15, northwest quarter
Bute No. 23 Section 15, southeast quarter
Bute No. 24 Section 15, southwest quarter
Bute No. 25 Section 9, northeast quarter
Bute No. 26 Section 9, northwest quarter
Bute No. 27 Section 9, southeast quarter
Bute No. 28 Section 9, southwest quarter
Bute No. 30 Section 16, northwest quarter
Bute No. 31 Section 16, southeast quarter
Bute No. 32 Section 16, southwest quarter
Bute No. 33 Section 8, northeast quarter
Bute No. 34 Section 8, northwest quarter
Bute No. 35 Section 8, southeast quarter
Bute No. 36 Section 8, southwest quarter
Bute No. 37 Section 17, northeast quarter
Bute No. 38 Section 17, northwest quarter
Bute No. 39 Section 17, southeast quarter
Bute No. 40 Section 17, southwest quarter
Bute No. 41 Section 7, northeast quarter
Bute No. 42 Section 7, northwest quarter
Bute No. 43 Section 7, southeast quarter
Bute No. 44 Section 7, southwest quarter
Bute No. 45 Section 18, northeast quarter
Bute No. 46 Section 18, northwest quarter
Bute No. 47 Section 18, southeast quarter
Bute No. 48 Section 18, southwest quarter

2. That the decisions of the Commissioner of the General Land Office in Contest 11759 dated May 4, 1928, and October 8, 1931, and any other decision in that contest, purporting to declare the Atlas Placer Mining Claims Nos. [441] 1-3 inclusive, 7, 9, 10, 12, 17 and 18 null and

void for failure to perform annual assessment work, were and are void, invalid and of no force or effect whatever upon the validity of the aforesaid Atlas Claims or of any interest or interests in said claims or any of them. In the location certificates the aforesaid Atlas Claims are described as comprising the following portions of Township 4 South, Range 95 West of the Sixth Principal Meridian, Rio Blanco County, Colorado:

Atlas No. 1 Section 12, southwest quarter
Atlas No. 2 Section 13, northwest quarter
Atlas No. 3 Section 13, southwest quarter
Atlas No. 7 Section 14, northeast quarter
Atlas No. 9 Section 14, southeast quarter
Atlas No. 10 Section 14, southwest quarter
Atlas No. 12 Section 10, northwest quarter
Atlas No. 17 Section 15, southeast quarter
Atlas No. 18 Section 15, southwest quarter

3. That the decisions of the Commissioner of the General Land Office in Contest 11761 dated May 4, 1928 and October 20, 1931, and any other decision in that contest, purporting to declare the Camp Bird Placer Mining Claims Nos. 1-20 inclusive null and void for failure to perform annual assessment work, were and are void, invalid and of no force or effect whatever upon the validity of the aforesaid Camp Bird Claims or of any interest or interests in said claims or any of them. In the location certificates the aforesaid Camp Bird Claims are described as comprising the following portions of Township 4 South, Range 95 West of the Sixth Principal Meridian, in Rio Blanco County, Colorado:

Camp Bird No. 1 Section 2, northwest quarter
Camp Bird No. 2 Section 2, southeast quarter
Camp Bird No. 3 Section 2, southwest quarter
Camp Bird No. 4 Section 3, northeast quarter

[442]

Camp Bird No. 5 Section 3, northwest quarter
Camp Bird No. 6 Section 3, southeast quarter
Camp Bird No. 7 Section 3, southwest quarter
Camp Bird No. 8 Section 4, northeast quarter
Camp Bird No. 9 Section 4, northwest quarter
Camp Bird No. 10 Section 4, southeast quarter
Camp Bird No. 11 Section 4, southwest quarter

Camp Bird No. 12 Section 9, northeast quarter
Camp Bird No. 13 Section 9, northwest quarter
Camp Bird No. 14 Section 9, southeast quarter
Camp Bird No. 15 Section 9, southwest quarter
Camp Bird No. 16 Section 16, northeast quarter
Camp Bird No. 17 Section 16, northwest quarter
Camp Bird No. 18 Section 16, southeast quarter
Camp Bird No. 19 Section 16, southwest quarter
Camp Bird No. 20 Section 17, southeast quarter

4. That the defendant, his successors and his or their agents and employees are forever enjoined and restrained from asserting against the plaintiffs and their successors in interest the validity of the decisions above referred to.

Dated at Denver, Colorado, this 1st day of March, 1967.

William E. Doyle
United States District Judge

The foregoing judgment is approved as to form.

Maxwell Aley
Attorney for Plaintiffs

_____
Attorney for Defendant

Filed March 1, 1967

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[443] NOTICE OF APPEAL

Notice is hereby given that the above-named defendant by its attorneys, Lawrence M. Henry, United States Attorney for the District of Colorado, and Richard T. Spriggs, Assistant United States Attorney for the District of Colorado, hereby appeals to the United States Court of Appeals for the Tenth Circuit from the final

judgment entered herein by the United States District Court for the District of Colorado on the 1st day of March, 1967.

Dated April 26, 1967.

Lawrence M. Henry
United States Attorney for
the District of Colorado

By Richard T. Spriggs
Assistant United States Attorney
for the District of Colorado
Denver, Colorado

Filed April 26, 1967

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* * * *

[773] REPORTER'S TRANSCRIPT

[774] Be it remembered that the above entitled matters came on for trial to the Court before the Honorable William E. Doyle, Judge, presiding, at the hour of 9:30 o'clock, a.m., on Monday, July 18, 1966.

Appearances:

Fowler Hamilton, Esq., Attorney at Law, of Cleary, Gottlieb, Steen & Hamilton, New York City, New York; and,

Donald L: Morgan, Esq., Attorney at Law, of Cleary, Gottlieb, Steen & Hamilton, Washington, D. C.; and,

Richard W: Hulbert, Esq., Attorney at Law, of Cleary, Gottlieb, Steen & Hamilton, New York City, New York; and,

John B: Tweedy, Esq., Attorney at Law, of Tweedy, Mosley, Aley & Young, Denver, Colorado; and,

Maxwell Aley, Esq., Attorney at Law, of Tweedy, Mosley, Aley & Young, Denver, Colorado, appearing on be-

half of the plaintiff, Oil Shale Corporation, Case No. 8680, and Brown, et al., Case No. 9202.

Fred M. Winner, Esq., Attorney at Law, Denver, Colorado, appearing on behalf of the Plaintiff, Joseph B. Umpleby, Et Al, Case No. 8685.

Richard L: Eason, Esq., Attorney at Law, of Schmidt, Van Cise, Freeman & Tooley, Denver, Colorado, appearing on behalf of the plaintiff Barnette T. Napier, Et Al., Case No. 8691.

Thomas L. McKevitt, Esq., Attorney at Law, United States Attorney, Washington, D. C.; and,

David I. Shedroff, Esq., Attorney at Law, Assistant U. S. Attorney, Denver, Colorado; and,

[775] Robert Mesch, Esq., Attorney at Law, Regional Solicitor's Office, Denver, Colorado; and,

Lowell Madsen, Esq., Attorney at Law, Regional Solicitor's Office, Denver, Colorado, appearing on behalf of the Defendant in Cases Nos. 8680, 8685, 8691 and 9202.

W-h-e-r-e-u-p-o-n, the following proceedings were had, to-wit:

* * * *

[833] MR. McKEVITT:

* * * *

Now with that coming along, we again had a revival of a number of people coming in and applying for patents, and between 1948 and 1955, there were a lot of patents [834] out of the Department of Interior in oil shale lands, many of which did cover lands that had been declared null and void in these earlier contests.

Now the evidence—we will go into that somewhat—we will show how many lands were actually patented during that period. There was somewhat of an issue as to whether Interior knew in every instance that the claims had been declared null and void for failure to do assessment work. Certainly the evidence will know she knew in certain some—toward the latter ones—but we contend the great bulk of them because of the various ways proceedings came along and lack of statements, they had been declared null and void, and it wasn't done.

Now we might mention just briefly here that in 1953 and 1954, this matter of having a lot of old nontermin-

able mining patents out on the public domain became a problem. Well, I would say to a great extent to the mineral interest, people were interested in oil and gas who might want to get an oil and gas permit on the public domain, and they would say, "You go out here and try to get an oil and gas lease. You don't know whether there was a mining claim out there or not. All the land looks alike. Nothing on the land to show it is there. We can go down and look at the records at the County Courthouse and even there we will [835] have an awful time trying to find out because of the survey problems."

* * * *

[876] MR. HAMILTON: Your Honor, there is one question that arises and that has to do with this: In view of the fact that Mr. McKevitt is going to made addition objection, the question arises in connection with title and standing to sue.

Maybe I should make it clear by saying this: That is there is no question about the record title, then at this point we are prepared to rest as far as our prima facie case is concerned. In other words, if I may state just a moment about the title point.

We have furnished counsel for the Government with an abstract of title. There is one supplemental part of it that we will have later in the day that will bring it up to the appropriate date. We have it now, as a matter of fact.

Now, if subject to his objection on relevancy, counsel for the defendant is prepared to say that that abstract is a proper abstract, prima facie, gives us title, why, then, we are prepared as far as our prima facie case is concerned, if I make myself clear?

MR. McKEVITT: What case are you talking about?

MR. HAMILTON: Toscoe and Brown; both of them.

MR. McKEVITT: Toscoe and Brown, as far as offering the abstracts?

[877] MR. HAMILTON: Yes, as far as the two cases.

THE COURT: Well, I don't think the Government has ever contended that there are any other claimants worthy of attention. In other words, it is only the Gov-

ernment's objection or theories that are in the way of the title; isn't that right?

MR. McKEVITT: We want the abstract of title in, though, your Honor. We want to be able to refer to some of the title history of how these older claims came down—

THE COURT: Have you tendered those?

MR. HAMILTON: Yes, sir, we have.

THE COURT: Those are a part of 308 or 9 exhibits; right?

MR. HAMILTON: Yes.

MR. McKEVITT: What do you want to know, specifically?

MR. HAMILTON: I want to know whether it is your position now before I say I close, as far as the prima facie case is concerned—the things I want to find out is whether or not they contend that we have failed to make a prima facie case or showing of legal title or whether it will be necessary for me to put title counsel on the stand and go through the abstract shows that it shows?

MR. McKEVITT: No, that won't be necessary.

MR. HAMILTON: That won't be necessary?

MR. McKEVITT: I am sure if you put Mr. Tweedy on, [878] and we will leave it with the abstract, and that's plenty. There will be no need to put a technical witness on the stand.

THE COURT: In other words, you are willing to stipulate that if he called Mr. Tweedy, he would testify that title—

MR. HAMILTON: Is in the plaintiff's.

THE COURT: Is in the plaintiff's; right.

MR. McKEVITT: Right. So we are offering the abstract as such will go into evidence.

THE COURT: All right.

MR. HAMILTON: If Your Honor, please, I am informed by my colleagues there are six patent files that are in front of Mr. Shedroff that have beeen designated—Mr. Shedroff corrects me and says there are seven.

THE COURT: Very well.

MR. HAMILTON: We have just learned those are available today. We indicated to the Clerk that we would

like to offer them, and they have been numbered, but not marked. We would like to have them marked as a part of our case.

THE COURT: These files? These are Department files?

MR. HAMILTON: Yes.

THE COURT: Pertaining to these patents.

[879] MR. HAMILTON: To these patents.

MR. McKEVITT: Are you talking about the contents files?

MR. HAMILTON: I am talking about these files here. They relate not to claims involved in this case, but to the claims we argue are analagous to those.

THE COURT: Oh. One of them is the LaPauz claim, which was the first patented claim, and the other was the Sheridan claim, the two being contiguous to the Oyler claims involved in the Brown case. Do you object?

MR. McKEVITT: We do object. I see no relevancy between these files on some other claims and the issue before this Court.

THE COURT: Why do we need to clutter our records with all of that material? Aren't there facts in the record now? I note that you have commented on these cases in your brief. Why do you have to have this basic raw material? What do they add? Can't you take note of the fact of their having those cases without having the details of them in the record here?

MR. HAMILTON: The problem of proof, maybe we are over scrupulous, Your Honor. The problem of proof is La Pauz and the Sheridan and the Oyler claims, we will argue were exactly the same posture as regards the various points of the type that has been made upon the patents were issued, [880] we would argue in the La Pauz and Sheridan and case. We would try to offer or show. In other words, it is difficult to show without the records that there wasn't some difference. We have the files in there for the Oylers

* * * *

[978] MR. HAMILTON: No use belaboring this to Your Honor. Your Honor has been diligent enough to read through the documents. We will set it out in our

documents a little more, but we will as we sum it up. We have the point on jurisdiction.

We have a point on the rule which we urge should not be changed retroactively. We have our construction of the Oil Shale Company decision that it canceled and phrase overall as construed by the papers in the trial brief and in the record showing that they were canceled, set aside patents were granted.

We have our fourth point even if the decisions were not void, they were erroneous and under the circumstances as we urge in Tosco, we are now entitled to an appeal.

[979] Then I will touch briefly, if I may in Tosco, Your Honor, upon points that are important but subordinate, but I believe we would all agree to the main thrust of the case and those are three in number.

(1) Coming to the relef that we seek in Brown. The Brown cases, Your Honor will recall, is one that was one of the early claims that was located in the Naval Reserve. The Navy was naturally and properly interested in in to see if there were any ways to clear these claims out. There was an investigation in 1918 of the Brown Oyler claims and of the two contiguous, the LaPauz and Sheridan.

The Sheridan and the LaPauz and Oyler were held to be valid claims at that time. LaPauz and Sheridan proceeded to patent.

Another investigation was held to these claims in 1927, 1928. It was there held that their claims were valid. They had not been abandoned. They were properly located and that there was a proper discovery, but the assessment point was raised.

The decision adverse to the claim on the assessment point was entered subsequently after Krushnic and subsequently to Virginia-Colorado cases the record whows was ignored.

Then in 1957 and 1958 after the patent application had been filed in 1955, there was another [980] investigation.

As the documents show, the mineral report was that here is a valid claim. It is good. There was no ques-

tion of abandonment raised. There was no question of improper location raised. And it was recommended that patent issue.

The recommendation was approved by the superior of the mineral examiner. The patent claim was clear listed for patent. A certification note was made that the patent should issue. And it was caught up in this proceeding.

Now, if Your Honor please, under those circumstances, we feel a respectable argument could be made that there should be ordered an issuance of a patent and that we do not ask for.

We realize this is a difficult question. We think a very powerful argument could be made on the basis of the National Labor Relations Board against Atkins and other cases, that the matter should be remanded to the Interior with instructions to decide the case upou the basis of the record as it existed in 1962, which was the record before the Secretary which went up before the lower official on appeal, and then to the Secretary on the basis of which this claim was declared invalid in the Union case for failure to do assessment work, and our argument would be there, that [981] they have exhausted their administrative jurisdiction in argument that they turn around the other way, of course, on us. But we are not asking for that.

Although, we think a very powerful argument could be made that if an administrative agency looks into everything, raises every issue, and then denies the citizen right on one ground that that should be enough; but we don't ask that.

THE COURT: If on a remand if you just tell the agency to proceed in accordance with the views expressed, which is an interpretation of the law, isn't that as much as you can do? You can't design a procedure for them?

MR. HAMILTON: I think that's right, Your Honor, but we would suggest that there is one thing further that would be appropriate for you to do—

THE COURT: In other words, you would interpret laws as presented to you, and then if it calls for a re-

mand, then they are to view the law as you find it, I suppose?

MR. HAMILTON: Would not a decree in that case leave one question open, and that would be this:

Maybe Your Honor already has this in mind, but would a decree of that kind envisage, for example, because when they went back, say, they could raise abandonment which they have looked at three times and found it doesns't exist, and then if the claim were declared invalid [982] for that, and we came up and got that set aside, then we would be thrown back into the years and have to have a look at the question of location, and then if we lose on that, come back and assume we prevailed on judicial review, and then could we—we would be thrown back on discovery.

THE COURT: Do you have law that says that they are precluded from proceeding or taking up any other ground now? Do they have to limit themselves?

MR. HAMILTON: To assessment work. Do you mean in this case?

THE COURT: Yes.

MR. HAMILTON: Well, we hadn't asked. We were not going that far. What we were going to ask Your Honor to do was to tell or direct the Secretary to decide or—either to have the record before him, or have another hearing to come in with everything which he wanted, which seems to me not unreasonable, but in other words, let him have a look at everything, but not keep shooting away at us to state it. Anyway, we will submit it on authorities. We think that would be reasonable. We also think it would be reasonable for us to request, and to hope Your Honor would think it, to grasp the kind of retention of jurisdiction under the circumstances to see that the decree has been carried out which has been done in some of the Labor Board decisions, which we will present to you.

[983] THE COURT: Anyhow, the Brown case which it involves as a patent, it calls for a different kind of relief than in the Oil Shale Corporation; isn't that correct?

MR. HAMILTON: Of course, that then leaves me only—

THE COURT: What kind of relief are you requesting in that?

MR. HAMILTON: In the Tosco case?

THE COURT: Yes.

MR. HAMILTON: There we are requesting that we have a declaration from Your Honor that the old 1920—I think it was decision 129, 130 and 131, be rescinded, expunged, so they can no longer be used as a bases for contention by the Department that the claims are invalid, because of those developments, a declaratory judgment proceeeding, and that's all. That's the bit of relief we seek there.

THE COURT: And then you would have to go into the Department and apply for patent?

MR. HAMILTON: That's correct, sir, and they could raise every possible objection. We are not asking for any other further relief there. We don't think we are entitled to it, but we do think we are entitled to that on the record.

Now, if Your Honor, please, I turn to the two remaining points; one having to do with personal jurisdiction. As your Honor will recall—

THE COURT: This applies to a limited—

[984] MR. HAMILTON: This applies only to the Tosco case.

* * * *

[1020] MR. McKEVITT: True, they would have to go to the Secretary and then after they went to the Secretary there still existed this right to go to a court and this is the matter that gets very interesting. This is what Krushnic did. He went all the way through it. That is what the Ickes vs. Colorado people did. Here was the remedy. Every single one of these other people before Krushnic who had wanted to come in and take that remedy could have done it. Now, for one thing most of the cases went off on failure to appear. There was so little interest by a lot of these people in all these claims out here where they were brought that many were so-called default decisions, so I suppose they weren't even inter-

ested enough to come in and appear but they were more interested to go on to appeal. So, that's the factual situation with thousands of these old claims which we are concerned with in this particular res judicata situation. These people could have come in. They could have gone up to the Secretary and then they could have gone to the court.

Now, I don't know of any other—we have talked about this before; to me they would have to go to the courts at a reasonable time, but I don't know of any statute of limitations of going to a court.

There was the remedy for every one of these people. Failing to do it, it was perfectly appropriate to apply these principles of res judicata which, Your Honor, may lead us to [1021] the second point and this is the thing which Mr. Hamilton began with. He said, "Well, I want jurisdiction—." He said my second line, he says, after the decision came down in Ickes vs. Virginia-Colorado,—I say that is a matter of fact you actually vacated every one of these earlier decisions. Now he talks about the one little subsequent decision of the Secretary in 1935 and he is talking about hundreds of thousands—well, I hate to get into that—let's say fifty, sixty or seventy thousand of these things which had been declared null and void before, which there had been no appeal. They were setting there. They were final. He says now, "Oh, but you in fact are the man back in 1935 which would be under Secretary Ickes—that he did in fact reverse all of these. And we say he didn't and that is one of the things here.

* * * *

[1511] PLAINTIFF'S EXHIBIT

(Stamp) Dept of the Interior Secy's Off. Mails & Files Received Apr 20 1920 (word illegible)

(words illegible) Washington April 20, 1920. 2-39 Mineral Lds.

Memorandum for the Secretary of the Interior.

We now have before us for consideration the first application for patent for oil shale claims, the same being Glenwood Springs 013847 by Verner Z. Reed and James Doyle for fourteen placer claims covering 2240 acres situated in the Naval Oil Shale Reserve No. 1 created by Executive Order of December 6, 1916.

On Departmental sanction, we have written many letters to inquirers stating that, thus far, neither the Department nor any court, so far as we know, has ever held that oil shale lands and deposits are subject to the placer mining laws. It is understood that a very large portion of the oil shale lands in Colorado and Utah are covered by placer claims; some in good faith, probably more otherwise. In fact, we know of one large operation that seems to be entirely fraudulent, and we have heard of many others. Complaint even has been made that the stockmen are taking up these claims to hold the lands for grazing purposes.

The new leasing Act of February 25, 1920, provides for the leasing of oil shale deposits, and provides further (Sec. 21) "that any person having a valid claim to such minerals under [1512] existing laws on January 1, 1919" may transmute same into leases. Sec. 37 of the Act provides for the patenting of valid claims under preexisting laws.

Discovery is easy as to those claims that are located along the outcrops. There are doubtless many other claims back from the outcrops on which no discovery will appear. If we patent any oil shale placer claims, the leasing act will be a (word illegible) letter as to oil shale for some time. Note the language of Sec. 7 of the oil shale regulations under the leasing act, which were designed not to admit the existence of such a thing as a valid claim under the placer laws.

The matter is deemed of sufficient importance to ask for instructions. Submitted herewith is the report of a Special Agent and Mineral Examiner of this office on these locations, together with the record of the applications.

May 10, 1920 Answered Tallman

[1513] PLAINTIFF'S EXHIBIT 2

Report of the Secretary of the Interior
F.Y. 1927 29

* * * *

Oil Shale

One of the important subjects before the department during the year was that of oil shale, immense areas of which exist in Colorado, Utah, and Wyoming. Prior to February 25, 1920, these deposits were held to be subject to location and entry under the placer mining laws. On that date Congress passed the general leasing act, which repealed the placer mining laws as applicable to such deposits, and provided that thereafter they would be subject to disposition only through lease. One of the concluding sections of the act, however, provided "that valid claims existent at date of passage of this act, and thereafter maintained in compliance with the laws under which initiated" might be perfected under the prior existing laws. Those prior laws required the claims to be located, a valuable deposit of mineral discovered, that not less than $100 worth of labor or improvements be placed upon the claims each year, and that as a prerequisite to patent not less than $500 should have been expended upon or for the development of each location.

Immediately prior to the enactment of the leasing act, numerous locations were made upon the shale areas under the placer mining laws, and many of these locations have been followed by applications for patent. It became the duty of the department to consider these claims and to

determine whether the locators had complied with the requirements of the general mining laws. A public hearing, attended by many people interested, was held in the department on December 1, 1926, and the subject was thoroughly discussed. Following this hearing, after extended consideration by the department, decision was rendered in the case of Freeman et al. v. Summers, involving, primarily, the question of what constitutes sufficiency of discovery upon certain shale placer mining claims. The department applied [1514] the long-established rule that when the locator had discovered mineral within the limits of his claim in a situation and formation that the vein or deposit could be followed to depth, with reasonable assurance that paying minerals will be found, such discovery may form the basis of a patent, where compliance with the law has been had in other respects.

Field investigation is being made of all shale claims, to the end that valid rights may be protected and permitted to be perfected, but that invalid claims, where compliance with the laws has not been had, may be eliminated and canceled. Many difficult questions of law and of fact necessarily arise in these cases, and while general rules of law may be applied, the facts of each case, as disclosed by investigation and evidence, must govern the department in the disposition of the cases.

* * * *

[1515] PLAINTIFF'S EXHIBIT 3

Department of the Interior General Land Office Washington

In reply please refered to "A"CAO

Mar 7 1927 File as May 31, 1927-

Dep't of the Interior Received Mar 8 - 1927 To Solicitor Bedy's Off-Appts., Mails & Files (Stamp)

Proceedings in oil shale locations.

The Secretary of the Interior Sir:

* * * *

[1516] The question of the advisability of examining all oil shale locations in the field where no application for patent has been made nor any complaint filed against the same or where no application for lease or otherwise for the land has been filed has arisen. If such claims are to be examined at the present time the matter of procedure against the same requires consideration. It is thought possibly that by proceeding now against such locations evidence may be gathered which might not be available in the future should applications for patent be filed.

* * * *

[1519] The situation is called to your attention with the request that instructions be given by you as to the examination of the claims mentioned and as to the procedure that may be properly followed to declare the claims invalid if the evidence so warrants.

Very respectfully,

William Spry
Commissioner.

4-mc
4-7 mdo

May 31 1927 Answered

[1520] PLAINTIFF'S EXHIBIT 4

Department of the Interior Office of the Secretary Washington M-21882 May 31, 1927.
The Commissioner of the General Land Office.

Dear Mr. Commissioner: I have your request for instructions in the matter of oil shale claims (March 7, 1927, A. - C.A.O.)

After careful consideration, it is the judgment of the Department that all oil shale locations of record should be examined and reported upon by inspectors of this Department. The Navy has requested that this be done

with respect to all locations within the exterior limits of the naval oil shale reserves.

On the unreserved public domain it seems advisable that this course be pursued for numerous reasons. The Department believes that bona fide claims, regularly located and maintained in accordance with law, should be protected and be allowed to proceed pursuant to the provisions of the law under which initiated, and section 37 of the leasing act. Paper locations and locations not maintained as required by law constitute a cloud upon the public lands and interfere with their proper use and disposition. Moreover, as time goes on, it may be more and more difficult to ascertain and establish the facts surrounding locations and the work performed by the lomators and their successors in interest, or failure to perform work as required by law.

[1521] It seems important, therefore, that the examination be made as soon as practicable and the facts ascertained be made of record and available to the Department through the inspectors' reports.

It is therefore directed that the division inspector be instructed to proceed to examine and submit reports upon all claims of record within the area described. Where the reports are adverse and proceedings against the locations are contemplated, the propriety of proceeding immediatley, or waiting until an application for patent has been filed, or the protest submitted, may then be considered and further instructions asked for and received from the Department.

In order to expedite this work, both in the interest of bona fide claims, and in the interest of the Government as to claims not valid, an effort will be made to give the division inspector additional assistance for field work in the near future.

Very truly yours,

(Signed) E. C. Finney.
First Assistant Secretary.

[1522] PLAINTIFF'S EXHIBIT 5

Address only the Commissioner of the General Land Office
United States Department of the Interior General Land Office Washington

Reply please refer to ..... May 7, 1930. 2-139
Oil shale. Memorandum for the Secretary.

* * * *

After the leasing law was enacted, the matter of disposing of the oil shale deposits and the lands containing the same, presented a situation that required close study. It was decided that the claims should be investigated in the field for the purpose of determining whether or not they were bona fide claims existing at the date of the act, and also whether they had been maintained in accordance with the mining laws. These investigations have since been carried on and charges preferred against such locations as were reported to be invalid for any cause, such as, lack of discovery, dummy locators and failure to perform annual assessment work, [1523] and where applications have been filed failure to perform the required patent expenditures. Proceedings were instituted against claims reported in default in the performance of annual assessment work on the belief that in order to maintain a claim the locator must perform each year the required annual labor, under section 2324 R.S., which provides that on each claim not less than $100 worth of labor shall be performed or improvements made during each year.

* * * *

[1525] PLAINTIFF'S EXHIBIT 6

The Secretary of the Interior Washington Jun 16, 1939

Hon. Rene L. De Rouen, Chairman, Committee on the Public Lands, House of Representatives.

File copy
Surname:
Friedman
Hudson
Thomas
Speck
illegible
illegible
Terrett
Bradshaw
Altizer
Barash
Willey
Havell
Funck
Johnson
Stabler
Mendenhall
Burlew
Sears

My dear Mr. De Rouen: Further reference is made to your request of June 2 for a report on H. R. 6560 entitled "A Bill relating to placer mining claims for deposits of phosphate, sodium, potassium, oil, oil shale, or gas on the public domain."

* * * *

Since the recording of such mining locations was entrusted to the control of the miners of each mining district in conformity with [1526] local law, and since no complete examination of these records has ever been made, accurate figures as to the number and extent of such claims are not available. However, an examination was made by the General Land Office in the years between 1920 and 1930 to determine the status of the oil shale placer mining claims on and about the Green River shale formation in Colorado, Wyoming, and Utah. That examination disclosed that more than 30,000 such claims, embracing more than 4,000,000 acres of the public domain, were not being maintained by the performance of annual assessment work.

Conceiving that the Mineral Leasing Act conferred such authority upon him, the Secretary of the Interior challenged in departmental proceedings the validity of thousands of these claims. After full hearing the claims were declared void because of default in assessment work. Appeal was taken from these proceedings and in the cases of Wilbur v. Krushnic, 280 U. S. 306 (1930) and Ickes v. Virginia-Colorado Development Corp., 295 U. S. 639 (1935) the Supreme Court held that the proceedings exceeded the authority of the Secretary and were, therefore, without effect, From these decisions it is apparent that, although the performance of annual assessment work is expressly required by law, there is no statutory authority to enforce that requirement.

* * * *

Section 3 would effect the termination of such claims as are not maintained by the making of the assessment expenditures required by section 2324 of the Revised Statutes. The lands thereupon would be [1527] subject to laws and executive Orders governing the administration and disposition of public lands.

* * * *

Sincerely yours,

(Sgd.) Harold L. Ickes
Secretary of the Interior.

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* * * *

Clerk's Note: Plaintiff's Exhibits No. 8—Letter to Register from Wm. Spry 12/10/27; No. 9—Letter to Register from Commissioner 5/4/28; No. 10—Letter to Register from Wm. Spry 12/10/27; No. 11—Letter to Register from Wm. Spry 5/4/28; No. 12—Letter to Register from Wm. Spry 12/10/27; No. 13—Letter to Register from Wm. Spry 5/4/28; No. 14—Letter to Register from C. C. Moore 6/12/29,—appear in separate exhibit book.

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* * * *

[1568] PLAINTIFF'S EXHIBIT 15

14 Report of the Secretary of the Interior, FY 1930
Oil Shale

Oil-shale lands, though having no immediate value for oil, have received vigorous protection. During the past year, commencing last spring, every mining engineer in the General Land Office, save three, was called off other work and under my personal orders assisted in identifying, examining, and physically posting more than 6,400 oil-shale claims with notice of default to the United States for failure of the claimant to perform assessment work. This followed the Supreme Court decision of Wilbur v. Krushnic, which, although it reversed the department and sustained the claimant on the issue of assessment work, and so swept aside the bulk of our defensive procedure, left the possibility (though no certainty) that if the remaining claims were posted before resumption of work on the claim, a different result would follow. This posting work will continue during the current year, and the tremendous task of adjudicating these claims will get under way. A second test case in the courts may be expected. No leases have been issued under this administration. But oil-shale claims valid in 1920 can be taken to patent under the mining law, without any discretionary power in this department to decline to issue the patent. Accordingly about 42,000 acres have been patented.

* * * *

[1569] PLAINTIFF'S EXHIBIT 16

Telegram Official Business—Government Rates

From Interior Department Bureau Land Office Chg. Appropriation (name illegible) Havell Hathaway L P.J.A.

R. S. Kelley, Chief of Field Division, G.L.O., Postoffice Building, Denver, Colorado. Jan 15 1930

Your wire eleventh Krushnic decision you will submit soon as possible reports in all cases where shale locators

defauted annual labor and no evidence of resumption of work Stop You are also directed to as soon as practicable post notices on all such claims against which charges not already issued notices to be addressed to record claimants and to recite failure to perform assessment work and failure to resume and that by reason of such default the United States has taken possession of the land for purpose of holding for lease under leasing act of February twenty fifth nineteen twenty Stop Notice should bear date be over your name and official title and signed by the posting officer and credible witness Stop Preserve copy for files with statement of date and place posting

Approved: Jan 15 1930

Moore

(Sgd.) Edwards
Assistant Secretary

Received Jan 15 1930 G.L.O.

[1570] PLAINTIFF'S EXHIBIT 17

United States Department of the Interior General Land Office Washington

In Reply Please Refer to 1366293 "N" UEG, March 26, 1930 Instructions,

Mr. R. S. Kelley, Chief of Field Division, G.L.O. Denver, Colorado, Sir:

* * * *

[1571] Relative to posting notices on oil shale locations, that the United States challenges the claimant's right to the possession of the lands within the claims, because of a default in the performance of assessment work, such posting should be made, to be followed by the direction of adverse proceedings by this office, in the usual way, when it is more expeditious to do so, to head off resumption of work, than to wait until adverse proceedings are directed by this office, and in those instances where the addresses of all or some of the claimants are unknown,

so that notice of the default cannot be served on all or some of the claimant by registered mail.

* * * *

[1572] As to the second objection, the fact that an oil shale claimant failed to perform sufficient or no assessment work for the year ending July 1, 1929, and prior years, is of no consequence, if he resumes work before notice is [1573] served on him by the Government and completes such resumed work to the value of $100, with reasonable diligence, as he has then maintained his claim by the resumption of work before challenged by the Government. In order to constitute a good charge the Government must allege a default in the work, and also a failure to resume work, and must assume the burden of proving both allegations.

Very respectfully,

Sgd. C. C. Moore
Commissioner.

Approved: March 26, 1930

(Sgd.) Ray Lyman Wilbur
Secretary.

3-17-FJ

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* * * *

[1578] PLAINTIFF'S EXHIBIT 18

In Reply Please Refer To ..... (names illegible)
Department of the Interior General Land Office
Washington Apr 19 1930 1364176 "L" PJA
Address only the Commissioner of the General Land Office

Posting on oil shale claims. 2-139 oil shale

Mr. R. S. Kelley, Chief of Field Division, G.L.O., Denver, Colorado:

Sir: Referring to the proceedings against oil shale claims since the Krushnic decision, you have been directed

in a number of cases to post notices on the claims where the report submitted by you did not furnish the post office addresses of all the claimants. You were also given further general instructions in this respect by letter of March 26, 1930 (1366293).

The direction given in the specific cases was done as a precaution to post the claims after you had notice that charges had been issued, if posting had not already been done under the telegram of January 15, 1930. The telegram directed that, as soon as practicable, you would post notices on all claims against which charges had not already been issued which are in default of annual assessment work and no evidence of the resumption of work

Copy For Secretary's Office To Be always left on top. (Signed copy only rec'd in M. & F.) To Secretary 4/15/30 U.E.G.N. For signature (words illegible)

[1579] found. This of course included all claims not yet reported on, and all claims reported in default where charges had not been issued. Nothing in the letter of March 26, 1930, is to be construed to change or modify the telegraphic instructions, but it is desired that the posting be proceeded with as rapidly as possible so as to interpose the Government challenge against the resumption of work.

While you are doubtless taking all necessary steps to get notices to the claimants by posting and by furnishing correct post office addresses, it has been thought advisable to give you these further directions in order that you may understand that the purpose is to give prompt notice by appropriate charges and by posting in every proper case.

You are advised, further, that by Executive order of April 15, 1930, the President withdrew all deposits of oil shale, and lands containing such deposits, owned by the United States, and reserved the same for the purpose of investigation, examination and classification. You will therefore, modify the wording of the notices to be posted on claims in default of annual labor, referred to in said telegraphic instructions of January 15, 1930, so as to omit

(handwritten notation) 2-153 General Oil Shale with (word illegible)

[1580] after the statement that "the United States has taken possession of the lands", the declaration of the purpose of holding the same for lease under the leasing act of February 25, 1920. In lieu thereof, you will state that by reason of such default, "the United States has taken possession of the lands for its own uses and purposes".

Very respectfully,

C C Moore
Commissioner.

Approved: Apr 19 1930

(Sgd) Ray Lyman Wilbur
Secretary.

[1581] PLAINTIFF'S EXHIBIT 19

Department of the Interior Memorandum for the Press Immediate Release September 29, 1930.

* * * *

It was stated at the department that no leases for oil shale have been issued under this administration. The President's oil conservation policy was carried into effect by order of the department on March 13, 1929, as to both oil and oil shale, although oil shale has only a potential value until some economical process for extracting the oil is discovered.

However, the Secretary's discretion to refuse to issue leases does not, under the law, extend to claims located under the old mining laws before the mineral leasing act came into effect, in 1920. The mineral leasing act left intact such claims so long as they were maintained in accordance with the former law.

* * * *

[1582] However, because the adverse Krushnic decision left open the question of whether the Department had the right to declare these claims forfeited if such forfeiture was demanded before the locator had resumed his assess-

ment work, Secretary Wilbur, immediately after the Supreme Court decision came down, directed that action be taken against all claims then in default upon which work had not yet been resumed. Accordingly, practically every available man in the General Land Office field force was assigned to the duty of posting notices on oil shale claims that the Government claimed the land for default. Approximately, 5,700 notices were posted during the current season and these claims now await adjudication. In addition, adverse proceedings were directed against 3,081 other oil shale placer locations. Of this number 2,078 have been adjudicated as null and void by the Department after notices were served on the claimants of default in [1583] assessment and failure to resume work. Of the 5,700 oil shale claims that have been posted there are included about 912,000 acres, and in the 3,081 additional claims against which proceedings have been instituted, approximately 492,960 acres, making a total of 1,404,960 acres involved in such claims against which challenge has issued on the orders of Secretary Wilbur.

* * * *

The right of the department to challenge locations, as well as patent applications, for failure to do assessment work has been vigorously denied by oil shale claimants. Secretary Wilbur, however, has declined to recede from the requirement that such work be done and there are now pending in the department test cases which the locators asserted they plan to take into court.

* * * *

[1584] PLAINTIFF'S EXHIBIT 20

"A" CAO The Secretary of the Interior Washington 139 Obenchain Havell Jun 7 - 1930 2-139 Oil Shale Part 3

The Honorable The Secretary of Agriculture.

My dear Mr. Secretary: Since the decision of the U. S. Supreme Court was rendered on January 6, 1930, in the case of Ray Lyman Wilbur, as Secretary of the Interior, petitioner, vs. United States on Relation of Emil L.

Krushnic, involving oil shale claims, efforts have been made to give notice to the locators or their transferees that the United States has taken possession of the land for its own uses and purposes because of failure to perform annual assessment work and where such work had not been resumed prior to the giving of such notices.

The field force of the General Land Office in Colorado, Wyoming and Utah were,on January 15, 1930, directed to submit, as soon as possible, reports in all cases where shale locators defaulted in their annual labor and there was no evidence of resumption of work, and also to post notices on all such claims against which charges had not already been issued.

It has been found that it is impossible, without long delay, to obtain service in these cases of the charges made and, therefore, the posting of the claims on the land has been resorted to. This posting is being carried on rapidly so far as the claims on the public lands are concerned.

* * * *

[1585] Very Truly yours,

(Sgd.) Ray Lyman Wilbur

[1586] PLAINTIFF'S EXHIBIT 21

Report of the Secretary of the Interior F.Y. 1931 29

* * * *

Oil Shale

* * * *

[1589]

32 Report of the Secretary of the Interior

* * * *

The oil-shale problem arises from the provision of section 37 of the mineral leasing act which permits claims located prior to the date of the act (February 25, 1920) to proceed to patent in compliance with the mining laws as they existed on that date. The principal requirements

are good faith of the locator, performance of assessment work, and discovery.

Some months prior to Kelley's resignation a Supreme Court decision in the case of Wilbur v. Krushnic had held that a locator in default in assessment work could resume work at any time in the absence of a challenge by the United States. Thereafter, convinced that many claims were being held without compliance with the law's requirement of assessment work, the department in January, 1930, had undertaken the task of physically posting notices of forfeiture on each claim as a preliminary step to adjudication. This work had been under way many months to the time of the Kelley matter. To date about 7,500 such claims have been posted; about 5,500 remain. Where the law as to discovery, assessment work, and good faith of locators has been complied with, patents issue on completion of $500 of development work and application for patent. About 195,000 acres have been patented in all. The estimated oil-shale area in Colorado is about 1,496,027 acres, in Utah, 2,754,959, and in Wyoming, 4,006,805; 156,024 acres are included in two naval reserves.

* * * *

[1590] PLAINTIFF'S EXHIBIT 22

18 Report of the Secretary of the Interior, 1932

* * * *

Oil Shale

* * * *

It was a tremendous task involving the filing of charges and the preparation for trial of cases against about 22,000 claims, covering about 2,600,000 acres. When the work was well under way, it may be recalled that one of our employees at Denver, a man named Ralph S. Kelley, who apparently had been harboring a fixed idea that the United States was being defrauded of these lands in some way, sold to the now defunct New York World some dis-

tortions of [1591] information he had abstracted from Government files in return for $12,000. The World's series of 'revelations' proved a fiasco, but the resulting work, involving an investigation by the Senate Public Lands Committee, necessarily delayed us. Now, however, the proceedings against these claims have been largely completed. Twelve thousand ninety-nine claims have been adjudged null and void and the area remaining subject to adjudication has been reduced to 1,165,000 acres. Those claims which have been legitimately maintained are, of course, being permitted to proceed to patent, and efforts are made to protect all equities.

* * * *

[1592] PLAINTIFF'S EXHIBIT 23

60 Report of the Secretary of the Interior, 1933

* * * *

Oil-shale contests.—There were 120 contests against oil-shale locations pending at the beginning of the year, including locations under patent proceedings; 1,655 new cases were added and 1,615 were disposed of, leaving 160 pending. Locations to the number of 11,146 for 1,448,980 acres were declared null and void.

* * * *

[1593] PLAINTIFF'S EXHIBIT 24

July 8, 1930 1349718 "N" UEC Adverse proceedings directed.

Register, Denver, Colorado.

Sir:

* * * *

Inasmuch as the charge as made, does not contain sufficient allegations as a basis for protest or contest, so that

the action taken declaring the locations null and [1595] void was not warranted, and as a supplemental report by the Chief of Field Division has been received, you will proceed in accordance with circular of February 26, 1916, and in the notice provided for in paragraphs 3, 4 and 5 thereof, you will state that the following charge has been filed by a representative of this office:

"That annual assessment work to the value of $100 was not performed upon each or any one of the Four A Nos. 1 to 4 inclusive, oil shale placers, for the year ending July 1, 1929, and that work has not been since resumed."

* * * *

Very respectfully,

C C Moore
Commissioner.

Approved: Jul -8 1930

(Sgd.) Ray Lyman Wilbur
Secretary.

6-28-ML

[1596] PLAINTIFF'S EXHIBIT 25

Address only the Commissioner of the General Land Office 278
United States Department of the Interior General Land Office Washington
Towner Goerner (names illegible) Edwards (name illegible)
Reply please refer to 1273037 "N" WST Jun 7 - 1930
[Stamp] Dep't of the Interior Received Jun 11 1930 Secy's Office Aps. Mails & Files Oil shale placers.
Instructions requested. 2-139 Oil Shale
The Secretary of the Interior.

Sir: December 10, 1927, adverse proceedings were directed by this office against approximately 16 groups of oil shale placers embracing various lands in Ts. 2 and 4

S., Rs. 95, 96, 98, 99 and 100 W., 6thP.M., Colorado, upon the charge:

That the required assessment work for the years ending July 1, 1921, to 1927, inclusive, was not performed upon or for the benefit of the claims.

There was no charge made that the work had not been resumed.

Upon reports received from the Register of the Denver land office, before the reversal by the Court of Appeals of the District of Columbia, of the action of the Supreme Court of the District of Columbia in the Krushnic case, some of the claims were declared by this office to be null and void on that charge. No action has been taken in the matter of reports received since then, as to the remainder of the claims in these groups, upon the charge.

[1597] In my opinion, the action declaring some of the claims null and void on the charge as made, is not tenable and the balance of the claims cannot now be declared null and void on such charge.

It will, therefore, be necessary not only to post the claims that are still undisposed of, but also those which have been heretofore declared null and void, or to file amended charges against all such claims if the facts now warrant.

If you agree with this view, and approve this letter, instructions will be given to treat these locations, and others in like condition, the same as other locations which are now being handled by our field force.

Very respectfully,

C C Moore
Commissioner.

Approved: Jun 13 1930

(Sgd.) Ray Lyman Wilbur
Secretary.

6-6 las

[1598] PLAINTIFF'S EXHIBIT 26

Inc. United States Department of the Interior General Land Office Washington
1273037 "N" UEG Jun 19 1930 Instructions.
Mr. R. S. Kelley, Chief of Field Division, G. L. O., Denver, Colorado.

Sir: Prior to the reversal by the Court of Appeals of the District of Columbia of the decision of the Supreme Court of the District of Columbia in the Krushnic case, a number of oil shale placer claims, for which patent proceedings had not been instituted, were proceeded against on charges of failure to do assessment work, which charges as made were of no effect, in view of the decision of the Supreme Court of the United States in said Krushnic case, and all oil shale claims, which were proceeded against and declared null and void on that charge alone and those claims which were reported on relative to such defective charge and which have not finally been acted upon, will have to be proceeded against anew.

[1599] This is in accordance with the suggestions made and instructions requested by this office of the Secretary of the Interior on June 7, 1930, approved by the Secretary of the Interior June 13, 1930, copy inclosed.

The case referred to in said letter involves the War Eagle Nos. 1 to 19 inclusive, etc., oil shale placers, reported on by Mining Engineer Oral J. Berry on July 16, 1927.

You are instructed to treat all claims of this status the same as others claims which are now being posted, and furnish this office with a list of the cases which will be affected by such action.

Very respectfully,

Commissioner.

Clerk's Note: Plaintiff's Exhibits No. 27—Telegram to Commissioner from Kelley 6/23/30; No. 28—Letter to

Kelley from Moore 6/30/30; No. 29—Letter to Register from Moore 6/30/30; No. 30—Letter to Register from Moore 7/22/30—appear in separate exhibit book.

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* * * *

[1606]

PLAINTIFF'S EXHIBIT 31

[Illegible] the Commissioner of the General [illegible]

8 x United States Department of the Interior General Land Office Washington

Jul 3, 1931 In reply please refer to 1273037 "N" UEG United States vs. Ethel McGahen, et al. R. contest 11757. Locations null and void to the extent of the parties served. Adverse proceedings directed. Oil shale.

Register, By office letter "N" of June 30, 1930, adverse proceedings were directed against the Bute Nos 1 to 48 inclusive, oil shale placers, upon the charge:

"That annual assessment work to the value of $100 was not performed upon each or any one of the Butes Nos. 1 to 48 inclusive, oil shale placers, for the year ending July 1, 1929, and that work has not been since resumed."

* * * *

[1607] Notices of the charge issued by you and were served on eight of the ten claimants of record August 8, 1930, to October 30, 1930, and in your letter of January 15, 1931, you reported that the parties served with notices failed to file answers within the time allowed.

The failures of the parties served with notices 11757 44 [1608] to file answers denying the charge are taken as admissions by them of the truth thereof in view of which the Bute Nos. 1 to 48 inclusive, oil shale placers are declared null and void to the extent of their interests therein, and the United States has taken possession of the lands within the claims for its own uses and purposes.

* * * *

[1610]

PLAINTIFF'S EXHIBIT 32

Address only the [illegible] 4 x R 1 x C.F.D.
United States Department of the Interior General Land Office Washington
Nov 9 1931 In reply please refer to 1273037 "N" RLW
Oil shale R. contet 11757. Location null and void. Case closed.
Register, Denver, Colorado.

Sir:

* * * *

[1612] The failure of the contestees to file answers denying the charge are taken as admissions by them of the truth thereof, inview of which the Bute Nos. 1 to 48 inclusive, oil shle placers are declared null and void in their entiret and the United States has taken possession of the land within the claims for its own uses and purposes. The ase is closed.
Advise the parties hereof by ordinary mail.

Very respectfully,

Acting Commissioner.

Clerk's Note: Plaintiff's Exhibit No. 33—Letter to Register from Moore 6/30/30—appears in separate exhibit book.

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* * * *

[1615]

PLAINTIFF'S EXHIBIT 34

[Illegible] the Commissioner of the General [illegible] 7x 1x CFD

United States Department of the Interior General Land Office Washington
In reply please refer to 1273037 "N" RLW Oct 8 1931

Oil shale, R. Contest 11759. Locations null and void. Case closed.

Register, Denver, Colorado.

Sir: By office letter "N" of July 3, 1931, adverse proceedings were directed against the Atlas No. 1, Sec. 12, Nos. 2 and 3 Sec. 13, Nos. 4, 5 and 6, Sec. 11, Nos. 7, 8, 9 and 10, Sec. 14, Nos. 11, 12, 13 and 14, Sec. 10, Nos. 15, 16, 17 and 18, Sec. 15, T. 4 S., R. 95 W., 6th P. M., oil shale placers, upon the charge:

That annual assessment work to the value of $100 was not performed upon each or any one of the Atlas Nos. 1 to 18, inclusive, oil shale placers, for the year ending July 1, 1930, and that work had not been resumed on the Atlas Nos. 1 to 5, inclusive, 7 and 9 October 12, 1930, Nos. 6, 8, 10, 11, 13, 15 and 18 October 9, 1930, Nos. 12, 14, 16, 17 October 8, 1930, when challenges to the validity thereof were posted thereon on behalf of the United States.

Notices of the charge issued by you and were served on 7 of 8 parties reported as having interests in the claims 11759 40 [1616] on July 17, 18 and 20, 1931, and in your letter of August 29, 1931, you stated that no answers were filed by the parties served within the time allowed.

The failures of the contestees served with notices to file answers denying the charge were taken as admissions by them of the truth thereof, in view of which the Atlas Nos. 1 to 18, inclusive, oil shale placers are declared null and void to the extent of the interests of the parties served and the United States has taken possession of the lands within the claims for its own uses and purposes. The case is closed to the extent of the interests of the parties served.

Advise the parties by ordinary mail.

Very respectfully,

Thos. C Havell
Acting Commissioner.

10-5 11759 39

Clerk's Note: Plaintiff's Exhibit No. 35—Letter ot Register from Moore 6/30/30—appears in separate exhibit book.

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* * * *

[1619]

PLAINTIFF'S EXHIBIT 36

[Illegible] only the Commissioner of the General [illegible] 7x 1x CFD

United States Department of the Interior General Land Office Washington
Oct 20 1931 In reply please refer to 1273037 "N" RLW
Oil shale. R. Contest 11761. Locations null and void. Case closed.
Register, Denver, Colorado.

Sir: By office letter "N" of July 6, 1931, adverse proceedings were directed against the Camp Bird Nos. 1, 2, 3 and 4,Sec. 2, Nos. 5, 6 and 7, Sec. 3, Nos. 8, 9, 10 and 11, Sec. 4, Nos. 12, 13, 14 and 15, Sec. 9, Nos. 16, 17 18 and 19, Sec. 16, and No. 20, Sec. 17, T. 4 S., R. 95 W., 6th P. M., oil shale placers, upon the charge:

That annual assessment work to the value of $100 was not performed upon each or any one of the Camp Bird Nos. 1 to 20, inclusive, oil shale placers, for the year ending July 1, 1930, and that work had not been resumed on the Camp Bird Nos. 1, 3, 4 and 6 August 9, 1930, No..2 August 12, 1930, Nos 5, 7, 8, 10, 12, 14, 16, 18 August 8, 1930, Nos. 9, 11, 13, 15, 17, 19, 20, August 3, 1930, when challenges to the validity thereof were posted thereon on behalf of the United States.

11761 34 42

[1620] Notices of the charges issued by you and were served on 7 of 9 parties reported as having interests in the claims on August 9, 25 and 26, 1931, and July 17, 1930, and in your letter of August 27, 1931, you stated that no answers were filed by the parties served within the time allowed.

The failures of contestees served with notices to file answers denying the charges were taken as admissions by them of the truth thereof, in view of which the Camp Bird Nos. 1 to 20, inclusive, oil shale placers are declared null and void to the extent of the interests of the parties served and the United States has taken possession of the lands within the claims for its own uses and purposes. The case is closed to the extent of the interests of the parties served.

Advise the parties by ordinary mail.

Very respectfully,

Thos. C Havell
Acting Commissioner.

10-5 mvd 11761 33 41

[1621]

PLAINTIFF'S EXHIBIT 37

1186985 "N" MAS P. R. S. 4189

The Secretary of the Interior Washington
Nov 13 1930 2 - 205 Colorado Sears Goerner [names illegible] McDowell [names illegible]
The Honorable The Secretary of the Navy.
My dear Mr. Secretary:

* * * *

Adverse proceedings involving Oyler Nos. 1 to 4 inclusive, oil shale placers, were directed June 12, 1929, upon the following charge:

1. That assessment work to the value of $100 has not been done each and every year since the date of the leasing act.

In view of a recent decision by the Supreme Court, Wilbur vs. Krushnic (280 U. S. 306), this charge as it stands is ineffective. Before proceeding to a hearing it will be necessary to amend the charge by alleging default in annual assessment work as a present fact. It is probable that the Chief of Field Service has already directed an investigation as to the present status of the

Oyler claims in connection with the general investigation now in progress. However, his attention has been called to this particular matter and you will be further advised as soon as a report is received and action taken thereon.

Very truly yours,

(Sgd.) Ray Lyman Wilbur

Copy for Secretary's office To be always left on top. (Signed when rec'd in [illegible])

[1622]

PLAINTIFF'S EXHIBIT 38

MAS Address only the Commissioner of the General Land Office

United States Department of the Interior General Land Office Washington

36980 In reply please refer to 1186985 "N" MAS Nov 12 1930 Instructions. [Stamp] Received Nov 17 1930 Denver Field Division General Land Office

Mr. A. D. Hathaway, Chief of Field Service, G. L. O., Denver, Colorado.

Sir: By letter "N" of June 12, 1929, adverse proceedings were directed against the Oyler Nos. 1 to 4 oil shale placers embracing lands in Secs. 10, 11 and 12, T. 6 S., R. 95 W., 6th P. M., lying within the limits of naval oil shale reserve No. 1 upon the following charge:

1. That assessment work to the value of $100 has not been done each and every year since the date of the leasing act.

In view of the Krushnic decision this charge is ineffective. In case you have not already given instructions for an investigation as to the present status of the Oyler claims, you will now issue such instructions in order that this office may take appropriate action with regard to the pending adverse proceedings.

[Stamp] Confidential not for public inspection BLM 331 44627 191

[1623] The Navy Department appears to be anxious to have the status of the claims determined.

Very respectfully,

Thos C Havell
Acting Commissioner.

11-11-ML

[Stamp] Confidential not for public inspection BLM 330 44627 190

Clerk's Note: Plaintiff's Exhibit No. 39—Letter to Walter Spencer from Moore 7/20/31—appears in separate exhibit book.

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* * * *

[1626]

PLAINTIFF'S EXHIBIT 40

United States Department of the Interior General Land Office Washington

In reply please refer to 1186985 "N" CRB 12/2/31
United States, contestant, vs. The Index Shale Oil Company, et al., contestees,
:R contest 12038 :Oil shale placers :null and void
Register, Denver, Colorado

Sir: Pursuant to instructions from this office, the Chief of Field Division, on July 20, 1931, filed adverse proceedings against the Oyler oil shale placers No. 1, NE ¼ Sec. 10, No. 2, W ½ NW ¼, N ½ SW ¼, Sec. 11, No. 3, E ½ NW ¼, W ½ NE ¼, Sec. 11, and No. 4, E ½ NE ¼ Sec. 11 and W ½ NW ¼ Sec. 12, T. 6 S., R. 95 W., 6th P.M., on the charge:

"That annual assessment work to the value of $100 was not performed upon each or any one of the said claims for the year ending July 1, 1931, that work has not since been resumed, and that by reason of said de-

fault the United States has taken possession of the lands within the claims for its own uses and purposes."

Service was had and on August 14, 1931, the Index Shale Oil Company, by H. L. Brown, agent, filed [1627] its answer denying the charge, alleging that the performance of annual labor is [?] that in the absence of a charge that the said claims were not validly existent on the date of the leasing act of February 25, 1920 (41 Stat. 437), the charges are wholly insufficient and immaterial, that it denies that the United States has taken possession of the lands for its own uses and purposes, and it demurs to the charge on the grounds stated.

* * * *

[1629] As to the failure to perform the assessment work for the year in question, it is contended that the United States is without authority or right to institute a proceeding of this character, or to otherwise question an oil shale claimant's failure to perform annual labor upon his claims.

The record shows that the Oyler Nos. 1,2,3, and 4, placers were located September 25, 1916, upon lands valuable for oil shale, under the provisions of

* * * *

[1631]

* * * *

the general mining laws.

* * * *

[1632] It is admitted that a challenge by the United States to the valid existence of the Oyler claims was made while the owners thereof were in default in the performance of the annual labor for the year ending July 1, 1931, and before work was resumed. The right of the Government to make such a challenge is clearly recognized by the Supreme Court.

The Oyler claims Nos. 1, 2, 3, and 4, are, therefore, held to be null and void.

Advise contestees hereof, and that in the absence of an appeal from this decision to the Secretary of the In-

terior within 30 days from notice, said decision will become final without further notice.

Very respectfully,

C. C. Moore
Commissioner.

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* * * *

[1639]

PLAINTIFF'S EXHIBIT 41

A. 16465. March 10, 1932 The Index Shale Oil Company, *et al*

"N" : 1186985. : : Oil shale placers held void. : : Affirmed.

Appeal from the General Land Office.

In the adverse proceedings brought against Oyler Nos. 1 to 4 oil shale placers, located on lands in T. 6 S., R. 95 W., 6th P.M., Colorado. The Index Shale Oil Company *et al.*, claimants thereof, admitted by stipulation the charge that the required assessment work for the year ending July 1, 1931, had not been performed upon any of the claims above mentioned and that such work had not since been resumed.

The claimamts, however, demurred to the charge, contending, among other things that it did not constitute a cause of action; that it alleges only that the work was not performed *upon* any of the said claims for the year ending July 1, 1931, while the mining law permits [1640] assessment work to be done for the benefit of claims even though not actually done upon them, and until it is alleged that no assessment work was done either upon or for the benefit of said claims the charge is wholly insufficient and immaterial. It was further contended in support of the demurrer that the United States can not take advantage of the defaults in the performance of assessment work and that the Department has, therefore,

no jurisdiction to adjudge the matter stated in the charge, the same being wholly immaterial and insufficient.

* * * *

[1641] As to the other contentions they present no question of any importance that was not fully considered and rejected in *Federal Oil Shale Company*, decided November 11, 1930 (53 I.D. ——) and in like cases following.

The Commissioner's decision is accordingly affirmed.

(Signed John H. Edwards
Assistant Secretary

Clerk's Note: Exhibit 42, Photostat of letter to Register from Moore 1/20/32, is in separate Exhibit Book.

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* * * *

[1651]

PLAINTIFF'S EXHIBIT 43

The Secretary of the Interior Washington

Graves Finney (name illegible) (name illegible) 2-13 gs Oil Shale Mar 16 1933

The Honorable The Attorney General.

My dear Mr. Attorney General: The Supreme Court of the District of Columbia, on March 10, 1933, in the case of *Virginia-Colorado Development Corporation* v. *Ray Lyman Wilbur, Secretary of the Interior*, No. 55221 Equity, entered a decree ordering that a writ of injunction issue to the Secretary of the Interior requiring him, among other things, to vacate and set aside certain proceedings of the General Land Office preferring charges against and holding void the claim of plaintiffs to oil shale placer locations described in said decree. The case has been revived in the name of the present Secretary of

the Interior. A copy of the decree and of all other pleadings is inclosed herewith for your information.

* * * *

[1652] In the case just decided, however, there was and has been no resumption of work, and no application has been made for patent. During the existence and continuance of default in performing assessment work the Government challenged the valid existence of plaintiff's claim. The procedure was in accordance with the usual method prescribed by the rules and regulations of the Secretary of the Interior for preferring charges against, and challenging unperfected claims to the public domain when unoccupied by the claimant and apparently abandoned. This action is identical with that previously taken in other cases and is based on the suggestion in the Krushnic case, that "at least some form of challenge on behalf of the United States to the valid existence of the claim" should precede resumption of work.

* * * *

This case may be regarded as a test case. Many tracts of oil shale land of the public domain, once embraced in a location under the general mining laws, now lie wholly inactive through failure of the locators to perform any assessment work or other improvement or development thereon. Such tracts can not be leased under the act of February 25, 1920, if the locator may continue inactive for an indefinite period, and as a matter of right, reassert his claim by resuming work at will. Title thereby will remain clouded indefinitely.

It, therefore, is desirable that the Court of Appeals of the Destrict of Columbia review this decision. I request you, as has been usual in similar cases, to authorize the Clerk of that Court to treat the appeal as a Government case in so far as court costs and the printing of the record are concerned.

* * * *

Very truly yours,

(Sgd) Harold L. Ickes

Inclosure No. 180726.

[1653] PLAINTIFF'S EXHIBIT 44

Summaries of Bureau Reports Interior Ann Rep fy (number illegible)

* * * *

Contests against oil-shale locations.—Action has been suspended since April 1, 1933, awaiting court decision on jurisdiction of the Department to challenge the validity of oil-shale locations for failure to perform annual labor thereon. There are pending 503 Government contests against such locations.

* * * *

[1655] PLAINTIFF'S EXHIBIT 45

Department of the Interior Washington Aug 13 1935 A. 17108. Address only the Secretary of the Interior United States v. *Elizabeth E. Wright* et al. 10-3 General "N" : 1327376. : Oil shale placers held void. : Reversed.

Appeal from the General Land Office.

* * * *

Adverse proceedings were brought against the claims June 5, 1929. Some of the charges as subsequently amended and supplemented were to the effect that the annual assessment work had not been performed on certain of the claims for the years 1929 and 1931, and that work had not been resumed prior to notice and repossession of the land by the United States.

* * * *

[1658] In view of the pendency of a suit in the courts of the District of Columbia, brought against the Secretary of the Interior by the Virginia-Colorado Development Corporation Challenging the authority of the Department to institute proceedings against a mining claim for failure to perform the required assessment work thereon, and to declare a forefeiture of such a claim in the event the work required had not been done, action on

this appeal was stayed pending the outcome of the suit mentioned.

[1659] Final decision on the question was rendered by the Supreme Court on June 3, 1935, in the case styled, *Harold L. Ickes, Secretary of the Interior*, v. *Virginia-Colorado Development Corporation*, wherein it was held that the plaintiff lost no rights in its claim by failure to do the assessment work; that such failure gave the Government no right of forfeiture; that the Department's challenge, its adverse proceedings charging such failure, and its decision thereon, went beyond the authority conferred by law. In harmony with the ruling of the court, the Department, by decision of June 24, 1935, in a case of the Shale Oil Company, held the proceedings, instituted in that case against certain oil shale claims based upon alleged defaults in the performance of assessment work, were without authority of law and overruled its previous decisions maintaining the contrary.

It follows that the charges in the present case, relating to the nonperformance of assessment work, were preferred without authority of law, and in so far as the Commissioner's decision declares the claims forfeited because of failure to do assessment work thereon, or failure of the mining claimants to respond to such charges, it is without legal effect. With respect to Charges 3 and 4 as above set forth, the failure of the defendants to appear at the hearing ordered, without showing good cause therefor, or to [1660] submit a statement of fact rendering the charges immaterial, would, under the applicable regulations (Par. 10, Circular 460, 44 L. D. 572), be taken as a confession of the truth thereof and obviate the necessity for the Government to submit testimony in support of such charges.

* * * *

[1664] T. A. Walters

105224 First Assistant Secretary.

[1665] PLAINTIFF'S EXHIBIT 46

United States Department of the Interior Office of the Secretary Washington May 26 1934

(name illegible) Thomas Taylor 10/3 General

Dr Ralph H. McKee, Department of Chemical Engineering, Columbia University, New York, New York.

My dear Doctor McKee: I have your letter of May 15 relating to your request for oral argument in connection with the appeal of the *Shale Oil Company* from a decision of the Commissioner of the General Land Office, holding certain oil shale claims of the company void because of failure to perform annual assessment work on or for the benefit of the claims.

The question whether the Department has authority to forefit oil shale placer claims by reason of default in the performance of assessment work has recently been answered in the negative by the Court of Appeals of the District of Columbia in the case of *United States* v. *Virginia-Colorado Development Corpartion*, but a petition for certiorari filed by the Government in that case was granted by the Supreme Court on May 21.

In conformity with the usual practice, where questions of law pending on appeal in the Department have been submitted to the arbitrament of the courts, disposition of appeals involving the same questions is deferred pending the outcome of the court proceedings. The appeal of the Shale Oil Company and others raising the same questions will therefore not be disposed of until the final outcome in the Supreme Court of the case there pending.

* * * *

Sincerely yours,

(SGD) T. A. Walters
First Assistant Secretary.

[1666] PLAINTIFF'S EXHIBIT 47

Department of the Interior Memorandum for the Press U.S.F.S. Received Public Relations Feb 14 1931 File Clerk (initials illegible) Immediate Release February 12, 1931.

Secretary Wilbur today made the following statement of the Senate Committee on Public Lands

* * * *

[1667] As to oil shale land, the question of the Department's jurisdiction was, when I took office, under review by the Courts in the case of Wilbur vs. Krushnic. The decision of the Court of Appeals in that case had held on January 7, 1929, that the Department was without authority to interfere with the passage to private title of oil shale lands under the mining laws or to repossess defaulted claims. The Supreme Court decision in that case came down on January 6, 1930, affirming the Court of Appeals of the District of Columbia and directing mandamus to issue against me compelling the issuance of an oil shale patent in that test case. The Supreme Court in its decision, however, mentioned the fact that no "challenge" against that particular claim had been asserted by the Government. In order to test out the extent of the authority (if any) left to us by the Sumpreme Court decision I immediately directed the repossession by posting of notices on all oil shale claims then in default in assessment work. To date over 6,400 of them have been posted.

* * * *

[1668] As to oil shale lands, unlike the case of oil prospecting permits, the Secretary is, under the law, without discretion to refuse the application for patent if the law has been complied with. I have not had the legal power to reject any application for patent on grounds of policy; whereas between March 4, 1929 and June 30, 1930, some 5,790 applications for prospecting permits had been rejected, and 13,394 canceled, because the Mineral Leasing Act does permit the Socretary discretionary powers as to issuance of prospecting permits.

* * * *

[1674] PLAINTIFF'S EXHIBIT 48

United States Department of the Interior Office of the Secretary Washington Sep - 9 1930 A-15048. 10-3 Duncan

Messrs. C. S. and G. K. Thomas, Attorneys at Law, Denver, Colorado.

Gentlemen: I have your letter of August 22, 1930, requesting oral argument before the Department in connection with the appeal of the Federal Shale Oil Company from the decision of the Commissioner of the General Land Office dated March 27, 1930, overruling your demurrer to the charge of default in assessment work on an oil shale claim involved in Government Contest, Denver 12264.

* * * *

It is well to mention here that the principal question raised in your appeal as to the jurisdiction of the Department to declare an oil shale claim void for default in the performance of annual assessment work has been raised in other pending appeals, and it seems it would be mutually advantageous to both the Government and the claimants who are charged with such defaults, and it would expedite the disposition of such cases, if those who desire an oral argument would appear on the same day.

* * * *

[1675] Very truly yours,

(Sgd.) John H. Edwards
Assistant Secretary.

[1676] PLAINTIFF'S EXHIBIT 49

G.L.O. 1497564 "N" CRB (names illegible) Chapmen May 26 1933 2-139 Oil Shale

Mr. Eli F. Taylor, Register, United States Land Office, Salt Lake City, Utah.

My dear Mr. Taylor: I have your letter of May 11, in which you recommend that the Department sponsor legis-

lation which you believe would nullify defaulted oil shale placer mining claims without expense to the Government, and in which you refer to the expense incident to the present method of posting notices of forfeiture on the land and the difficulty in securing service of notice upon claimants.

The question of the right of this Department to proceed against such claims is involved in the case of Virginia-Colorado Development Corporation vs. United States which is now before the United States Court of Appeals of the District of Columbia, on appeal prosecuted by the Government.

In view of the pendency of this suit, it appears advisable to await final decision in the case before consideration is given to the matter of securing additional legislation of the nature you suggest.

Sincerely yours,

(Sgd) Harold L. Ickes
Secretary of the Interior.

Dep't of the Interior, Received May 23 1933 Secy's Office. Apps., Mails & Files
ect

[1677] PLAINTIFF'S EXHIBIT 50

The Secretary of the Interior Washington Feb-6 1934 Faky Margold Walters (names illegible) 2-139 Oil Shale

The Honorable The Attorney General.

My dear Mr. Attorney General: On January 22, 1934, in the case of Harold L. Ickes, as Secretary of the Interior v. Virginia-Colorado Development Corporation, No. (illegible), the Court of Appeals of the District of Columbia affirmed a decree of the Supreme Court of the District of Columbia which granted a mandatory injunction against the Secretary of the Interior requiring him to vacate a decision promulgated by him declaring certain oil shale placer claims of the Corporation null and void.

It is requested that proper steps be taken to obtain a review of this decree by the Supreme Court of the United States.

* * * *

It is of importance to this Department that an authoritative determination of the issues in this case be obtained. Many tracts of land of the character of those now subject to the lessing act of February 25, 1920, which were embraced in locations under the placer mining laws at the time of the passage of the leasing act, now lie inactive through failure of the locators to perform any assessment work or undertake any development thereof. Such tracts cannot be leased under the act of February 25, 1920, if the locator [1678] may at any time reassert his claim by renewing the performance of assessment work, and title to these tracts may therefore remain clouded indefinitely.

* * * *

Sincerely yours,

(Sgd) Harold L. Ickes
Secretary of the Interior.

Inclosures 180584

[1679] PLAINTIFF'S EXHIBIT 51

PRS No. (illegible) Department of the Interior Washington Oct 23 1918 806381 10

Mr. J. B. Benson, 822 McIntyre Building, Salt Lake City, Utah.

Dear Mr. Jenson: I am in receipt of your letter dated October 2, 1918, and making inquiry as to the necessity for performing annual assessment work on some oil shale lands in Wyoming, which you and associates are claiming under placer mining locations made in 1917 and 1918.

* * * *

[1680] As a general rule matters involving questions of assessment work on mining claims arise between adverse claimants to the same mineral land and go only to the right of possession, the determination of which is committed exclusively to the courts.

Cordially yours,

(Sgd.) Franklin K. Lane

10-11 lbk

[1681] PLAINTIFF'S EXHIBIT 52

January 20, 1919 Mr. Chris C. Dere Grand Valley, Colorado

My dear Sir:

* * * *

[1682] The annual expenditure on unpatented mining location required under Section 2324 U.S. Revised Statutes, and commonly called annual assessment work, is, with the exception of certain phosphate locations affected by a special act of Congress, solely a matter between rival or adverse claimants to the same mineral land, and goes only to that right of possession, the determination of which is committed exclusively to the courts. In other words, the non-performance of assessment work renders the land subject to adverse relocation provided work is not resumed [1683] by the original locator before a relocation is made, but ordinarily, whether or not an applicant for mineral patent has performed assessment work on his claim during the years he has held the same, does not affect the patent procedure.

* * * *

Very respectfully,

Acting Assistant Commissioner

1-15-mem

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* * * *

[1688] PLAINTIFF'S EXHIBIT 53

United States Department of the Interior Office of the Secretary Washington Jun-2 1933 A-17108. Duncan Thomas McDowell 10-3 General

Clarence E. Taylor, Esq., Suite 951 Otis Building, 10 South LaSalle Street, Chicago, Illinois.

My dear Mr. Taylor: I have your letter of May 19, 1933, addressed to my immediate predecessor, stating that John L. Steele, Esq., has beeen authorized by you to represent the defendant in an oral argument before me in the case of United States v. Elizabeth E. Wright, Appeal No. A-17108, and requesting that the matter be set for argument at an early date.

An examination of the appeal discloses that the principal question presented relates to the jurisdiction of the Department to entertain inquiry as to the performance of annual assessment work on oil shale placer locations and to declare such claims void where a default in the performance of such work is established.

Inasmuch as this question is now involved in the case entitled Harold L. Ickes v. Virginia-Colorado Development Corporation, pending in the Court of Appeals of the District of Columbia, it is suggested that the oral argument be deferred until a final disposition of this case is made in the courts.

Very truly yours,

Oscar L. Chapman
Assistant Secretary.

Copy to John L. Steele, Esq.

[1689] PLAINTIFF'S EXHIBIT 54

Address only the Commissioner of the General Land Office United States Department of the Interior General Land Office Washington Jun 28 1935 (initials

illegible) In Reply Please Refer to 1607437 "N" CRB Information.

Mr. W. J. Owen Lock Box 218, Victorville, California.

My dear Sir:

* * * *

[1690-A] It is possible if you left your claims in 1925 and have not since performed assessment work thereon that they have been relocated, but as also stated in the paragraph referred to, "The determination of the question of the right of possession between rival or adverse claimants to the same mineral land is committed exclusively to the court". Matters of trespass, thievery etc., such as those referred to in your letter, are also committed to the jurisdiction of the court, being punishable only under the laws of the state. As this office has no jurisdiction in the matters mentioned in your letter it will not undertake to advise you in that regard.

Very respectfully,

Fred W. Johnson
Commissioner.

6-26 edt

[1691] PLAINTIFF'S EXHIBIT 55

July 25, 1935 1511906 "N" ORB Information

Mr. W. W. Gowin, Monticello, Utah

My dear Sir: Replying to your letter of July 20, 1935, you are advised that this office has no juristiction over questions relating to the performance of annual assessment work on mining claims, such questions being committed exclusively to the courts.

* * * *

[1692] Very respectfully,

/s/ Fred W. Johnson
Commissioner

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[1696] PLAINTIFF'S EXHIBIT 56

July 26, 1935 1610298 "N" CRB Information.

Mr. George Van Dorsten, Auburn, California.

My dear Sir:

* * * *

It appears from the enclosures with your letter, which are herewith returned, that the relocation of your claims was made because of an alleged failure to perform the annual assessment work for the year ending July 1, 1934, or to file the notice required by the act of May 15, 1934. [1697] This office has no jurisdiction over the matter mentioned and it, therefore, will not undertake to advise you in that regard.

* * * *

Very respectfully,

/s/ Fred W. Johnson
Commissioner

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* * * *

[1701] PLAINTIFF'S EXHIBIT 57

Address only the Commissioner of the General Land Office United States Department of the Interior General Land Office Washington Jul 20 1935 In Reply Please Refer to 1610642 "N" CRB Information.

Mr. Willard S. Boeher, San Fernando, California.

My dear Sir: Replying to your letter of July 16, 1935, addressed to the Secretary and referred here by the Bureau of Mines, you are advised that this office has no jurisdiction over questions arising out of a failure to perform the annual assessment work on mining claims.

* * * *

[1702] Very respectfully,

Fred W. Johnson
Commissioner.

[1703] PLAINTIFF'S EXHIBIT 58

Address only the Commissioner of the General Land Office United States Department of the Interior General Land Office Washington Jul 20 1935 In Reply Please Refer to 1566740 "N" CRB Information.

Mr. Stephen O. Chappell, Box 47, Route # 2, Derita, North Carolina.

My dear Sir: Replying to your letter of July 23, 1935, you are advised that this office has no jurisdiction over the matter of the performance of annual assessment work on mining claims and no authority to suspend the requirements of the United States mining laws relating to the performance of such work. These requirements can only be suspended by act of Congress.

* * * *

[1704] Very respectfully,

Fred W. Johnson
Commissioner.

7-27-gmr

[1705] PLAINTIFF'S EXHIBIT 59

(illegible) PRS 2647 23 1/28/48 (Illegible) Office of the Secretary Washington 25, D. C. Feb 11 1946 Rewritten in the Solicitor's Office 2-139 General Bradshaw Johnson Nolan (names illegible)

Interior Dept Feb 10 1948 Secretary's Mail Center

My dear Senator Ecton: Reference is made to your letter of January 19 asking if the cost of geophysical work may be applied toward the annual assessment work required to be performed on mining claims, or toward satisfying the requirement that (illegible) worth of labor be expended or improvements made upon each mining location embraced in an application for patent.

The failure to perform the annual assessment work for the benefit of a valid mining location has no effect as against the United States but only renders the claim subject to loss through relocation by another claimant if the

work is not commenced or resumed before such relocation. Therefore, the question of whether the work done is of a nature that would be considered assessment work is not one within the jurisdiction of this Department but is for the appropriate court to determine should litigation arise between the claim holder and another claimant making a relocation of the same ground. See Ickes v. Virginia Colorado Development Corp., 295 U. S. 639.

* * * *

Sincerely yours,

(sgd) Oscar L. Chapman
Under Secretary of the Interior.

[1706] PLAINTIFF'S EXHIBIT 60

* * * *

Instructions. May 10, 1920.

Act of February 25, 1920—Oil Shale Placer Claims. Oil shale having been recognized by both the Department and Congress as a mineral deposit and a source of petroleum, and having been demonstrated elsewhere to be a material of economic importance, lands valuable on account thereof must be held to be subject to valid location and appropriation under the placer-mining laws to the same extent and subject to the same provisions and conditions as if valuable on account of oil or gas.

Vogelsang, First Assistant Secretary: The Department is in receipt of your [Commissioner of the General Land Office] memorandum dated April 20, 1920, stating that your office has before it for consideration the first application for patent for oil shale placer claims, the same being Glenwood Springs mineral entry 015847 by Verner Z. Feed and James Doyle for fourteen placer mining claims covering 2,210 acres now situate in Naval Oil Shale Reserve No. 1, created by Executive order of December 6, 1916.

You refer to the provisions of the leasing law of February 25, 1920 (41 Stat., 437), relating to oil shale de-

posits, and state that you deem the matter of sufficient importance to warrant its submission for instructions of the Department.

The entry in question was allowed February 25, 1919, for the La Paz Nos. 1 to 14, inclusive, placer mining claims, survey No. 19837, situate in what, if otherwise surveyed would be parts of Secs. 14 to 20, inclusive, 22, and 23, T. 6 S., R. 95 W., 6th P. M., Parachute mining district, Glenwood Springs, Colorado, which claims purport to have been located November 14, 1912, on account of "petroleum and other mineral oils, oil shales, hydrocarbons and related materials," each by eight persons.

By section 2319 of the Revised Statutes it is provided that: All valuable mineral deposits in lands belonging to the United States, both surveyed and unsurveyed, are hereby declared to be free and open to exploration and purchase, and the lands in which they are found to occupation and purchase, by citizens of the United States and those who have declared their intention to become such, under regulations prescribed by law, and according to the local customs or rules of miners in the several mining districts, so far as the same are applicable and not inconsistent with the laws of the United States.

And by the act of February 11, 1897 (29 Stat., 526), it is provided: That any person authorized to enter lands under the mining laws of the United States may enter and obtain patent to lands containing petroleum or other mineral oils and chiefly valuable therefor, under the provisions of the laws relating to placer mineral claims.

Oil shale has long been recognized as a valuable mineral deposit and for many years the mining of such deposits and the distillation of petroleum and other mineral substances therefrom has been an extensive industry in Scotland, that has afforded employment to many people and produced large dividends. While there are no oil shale operations in the United States that have reached that point of commercial development or production, a reference to departmental publications indicates that there is great activity, particularly in the States of Colorado, Utah, Montana, Nevada, and California, looking to such development and production at places where there are large and easily accessible deposits of rich oil shale,

and that some shale oil has been produced. It is reported that several small plants have been already completed, or are under construction, near DeBeque, Colorado, which is only a short distance from the land included in the entry of Reed and Doyle.

The Department has had numerous inquiries as to the locatability and patentability of such deposits under the mining laws and in response thereto, while disclaiming any intention of expressing a binding opinion in the premises, it has nevertheless declared itself as favorable to the view that such deposits, if valuable, are subject [1707] to location and purchase under the mining laws. In a letter dated May 16, 1916, addressed to Senator Myers the Department said that:

* * * it would seem that a discovery by competent locators, locating in good faith, of oil shale, upon the unreserved, unappropriated and unwithdrawn public domain, capable, by approved methods, of yielding oil in sufficient quantities so as to make the land chiefly valuable therefor, would be a sufficient compliance with the provisions of said oil placer act of 1897, and that locations based upon such a discovery must be made and entered, if at all, under the provisions of said act of 1897.

In a letter dated December 26, 1917, addressed to Representative W. A. Ayers, it was said:

Large areas of land in Colorado, Utah, and Wyoming have been classified by the Department as mineral land valuable for oil shale. The lands so classified, except two small (illegible), one each in Colorado and Utah which have been set aside as naval oil shale reserves, are open to mineral entry under the mining laws of the United States and to nonmineral entry in accordance with the provisions of the act of July 17, 1914, the shale deposits when entries are made under this act being reserved for separate acquisition under the mineral land laws.

In a letter dated April 11, 1918, addressed to Mr. Fred L. Morris, Lawrence, Kansas, it was said that:

* * * if these deposits of oil shales are valuable they are now subject to location and entry under the mining laws by citizens of the United States.

And in a letter dated June 30, 1919, addressed to Mr. Hal P. Wilson, Detroit, Michigan, it was said:

The lands included in Naval Oil Shale Reserve Colorado No. 1 and Utah No. 2 were withdrawn from appropriation and reserved for the United States Navy, and are not subject to location or the acquirement of any rights under the United States public-land laws while the withdrawal remains in force. If valid claims have been initiated prior to the withdrawal and have been maintained in accordance with law, they are protected under the terms of the withdrawal act of June 25, 1910 (36 Stat., 817), but I am not advised as to whether any portions of the withdrawn lands are so held.

In the letter of the Director of the Geological Survey of May 23, 1916, addressed to you and advising you of the classification of certain areas, including that embraced in the said entry of Reed and Doyle, the Director said:

The net result of oil shale investigations already made is that the oil-shale areas in Colorado, Utah, and Wyoming constitute a latent petroleum reserve whose possible yield is several times the estimated total remaining supply of petroleum in the United States.

While the data at hand are not sufficient to warrant a specific statement as to the total recoverable nitrogen content of these shales, it is believed possible that this will prove so large as to give these deposits a value as a source of nitrogen equal to their value as a source of petroleum.

In view of the high prospective mineral value of lands underlain by oil-shale deposits it is of course apparent that they should not be permitted to be acquired under the nonmineral land laws. The lands have not been recommended for withdrawal because the oil-shale industry is not yet developed in the United States, and as it is desired to give opportunity for the establishment of experimental plants, it is believed the lands should remain open for the present to acquisition under the mineral-land laws, even though they are ambiguous and but poorly adapted to deposits of this type.

Accordingly, I hereby classify the tracts listed below as mineral lands, valuable as a source of petroleum and nitrogen, and request that you make the proper notation of the classification upon your records.

Such classifications of lands containing oil shale have been accepted by the Department as prima facie evidence of the value of the lands so classified for mining purposes so as to require agricultural entrymen therefor to accept restricted patents to their claims under the provisions of the act of July 17, 1914 (38 Stat., 509), or assume the burden of establishing their nonmineral character.

In his letter of November 15, 1916, transmitting to the Department a proposed Executive order for the creation of Naval Oil Shale Reserve No. 1, Colorado No. 1, embracing approximately 45,400 acres, and including the land applied for by Reed and Doyle, the Director of the Geological Survey said: "The Colorado area is near transportation, and includes a part of the richest of the known shale deposits."

By section 37 of the leasing act of February 25, 1920, it was provided:

> That the deposits of * * * oil, oil shale, and gas herein referred to, in lands valuable for such minerals, * * * shall be subject to disposition only in the form and manner provided in this act, except as to valid claims existent at the date of the passage of this act and thereafter maintained in compliance with the laws under which initiated, which claims may be perfected under such laws, including discovery.

Oil shale having been thus recognized by the Department and by Congress as a mineral deposit and a source of petroleum, and having been demonstrated elsewhere to be a material of economic importance, lands valuable on account thereof must be held to have been subject to valid location and appropriation under the placer mining laws, to the same extent and subject to the same provisions and conditions as if valuable on account of oil or gas. Entries and applications for patent for oil shale placer claims will, therefore, be adjudicated by your office in accordance with the same legal provisions and with refer-

ence to the same requirements and limitations as are applicable to oil and gas placers.

The record of the entry accompanying your memorandum is returned for such adjudication.

* * * *

[1713] PLAINTIFF'S EXHIBIT 62

Hon Lawrence C. Phipps, United States Senate.

My dear Senator: Answering your inquiry as to whether decision by First Assistant Secretary in the case of the Reed Doyle oil shale placer mining claims has my approval, I have to advise you that the decision in question was prepared after careful study of the mining laws and decisions by the legal force of this Department, and in the unanimous opinion of that force was the only conclusion which could be reached under the law and the facts. No reasons have been presented to me which would warrant the view that the conclusion was incorrect.

Cordially yours,

(Sgd.) John Barton Payne
Secretary.

(initials illegible)

[1714] PLAINTIFF'S EXHIBIT 63

Motion for Summary Judgment

Comes now the defendant, United States of America, by and through A. Pratt Kesler, United States Attorney for the District of Utah, and Llewellyn O. Thomas, Assistant United States Attorney for said District, and hereby moves the above Honorable Court to enter summary judgment in favor of defendant in the above-entitled cause, such motion being filed herein in accordance with the provisions of Rule 56(b) and (c), Federal Rules

of Civil Procedure, and defendant respectfully represents and says to the court that the pleadings on file and the affidavit of H. Byron Mock attached hereto show that defendant is entitled to judgment as a matter of law upon the following grounds and for the following reasons, to-wit:

1. According to plaintiff's complaint this action is based upon the provisions of Title 28, Section 1346(b), United States Code Annotated, and the said action is barred by the provisions of Title 28, Section 2680(a), United States Code Annotated.

Dated this 15th day of April, 1955.

A. Pratt Kesler
United States Attorney

Llewellyn O. Thomas
Assistant United States Attorney
Attorneys for Defendant

* * * *

[1715] Affidavit State of Utah County of Salt Lake ss.

H. Byron Mock, being first duly sworn, on oath, deposes and says:

1. During the years 1952 and 1953, the period involved in the above-entitled action, as appears in plaintiff's complaint, he was employed by the defendant as Regional Administrator in the Bureau of Land Management, United States Department of the Interior, under the direction of the Secretary of the Interior, and his assistants, with offices in Salt Lake City, Utah, and during the said two years as such Regional Administrator in said Bureau he was in charge of the administering and supervising of grazing on the surface of public lands in Region IV located within the States of Utah and Colorado, which included grazing District No. 7 within the State of Colorado;

2. Pursuant to and in accordance with the authority granted to the Secretary of the Interior of the United States of America by Act of United States Congress of June 28, 1934, 48 Stat. 1269, Title 43, Section 315, et seq., called Taylor Grazing Act, and for the purpose of permitting the use of the surface of the lands therein described for grazing under the supervision and control of the United States Department of the Interior, on to-wit, October 12, 1940, there was duly established, by order of A. J. Wirtz, Acting Secretary of the Interior, of the United States of America, Grazing District No. 7, in the State of Colorado, embracing, among other lands, the lands located in Township 5 South, Range 100 West, 6 P. M. described in paragraph 5 of plaintiff's complaint, and notice thereof was duly published in the Federal Register of Tuesday, October 22, 1940, on [1716] pages 4179, 4180 and 4181 thereof, in accordance with the Federal Register Act, approved July 26, 1935, (49 Stat. 500, Title 44, Section 305, et seq., U.S.C.A.);

3. During the said years 1952 and 1953 there was in full force and effect in the said Bureau of Land Management the administrative practice and policy as to the control and regulation by the United States Government of grazing on the surface of unpatented mining claims, including the claims described in plaintiff's complaint, established by and operated under the hereto attached memorandum approved by the Assistant Secretary of the Interior on January 3, 1946, and the hereto attached memorandum approved June 9, 1947, by the Acting Secretary of the Interior, which in the years 1952 and 1953 were a part of the duly established rules, regulations and directives under which the Bureau of Land Management did control and regulate the grazing of the surface of unpatented mining claims, as shown on the attached forms numbered 4-1096 and 4-1180;

4. All acts performed by the employees of defendant, named in plaintiff's complaint, in respect to the grazing of the surface of the unpatented mining claims described in plaintiff's complaint in the said years 1952 and 1953 were performed by said employees pursuant to and in the execution of the rules, regulations, and directives of

the Bureau of Land Management, United States Department of the Interior, of which the said establishment of said Grazing District No. 7 and the said attached memoranda are a part.

H. Byron Mock

Subscribed and sworn to before me this 15th day of April, 1955.

Lucy S. Taylor
Notary Public, residing at:
Bountiful, Utah

My Commission Expires:

[1717] Copy United States Department of the Interior Grazing Service Office of the Director Salt Lake City 9 Box 659 December 3, 1945

Memorandum for the Secretary:

Orderly administration of the grazing districts established since June 28, 1934, under the provisions of the Taylor Grazing Act, comprising large areas of the public domain in western Colorado, eastern Utah and southern Wyoming, has been affected seriously by the practice of numerous unpatented oil shale mining claimants leasing the located lands to stockmen for grazing purposes. The administrative difficulties resulting from the practice have long been a serious problem. A solution has been diligently sought by the Grazing Service. The unsatisfactory situation persists and becomes more acute from year to year.

The mining locations in question were initiated under the placer mining laws prior to the enactment of the Mineral Leasing Law of 1920, and little or no annual assessment work or other mining work has since been performed upon the claims and cannot be required by the Government under existing law as announced in decisions of the Supreme Court of the United States in the cases of Wilbur v. Krushnic, 28C U.S. 306 (1930), and Ickes v. Virginia-Colorado Development Corporation, 295 U. S. 639 (1935), holding that failure to perform such work

did not render the claims invalid, but merely subjected them to loss through relocation by another claimant.

Since the existing United States mining laws do not require mining locations to be recorded on the records of the General Land Office or of its district offices, there are virtually thousands of these mining locations of which the Department has little or no knowledge. The only source of information, other than such marks as may appear upon the ground, is the county records in those cases where the claims have been recorded, and it would be impractical for the Grazing Service to make examinations and attempt to determine the respective rights of the numerous locators in view of the many conflicting claims.

Legislation has been proposed by the Department which would require the oil shale claimants to file notice of their intention to [1718] hold and develop the claims. In other words, it would require them to place the claims of record with the Federal Government. The proposed legislation (S. 1139, 78th Congress, 1st Session) was discussed extensively before a Subcommittee of the Committee on Public Lands and Surveys under Senate Resolution 241, extended, at Denver, Colorado, on November 15 and 16, 1943. The proposed legislation has not been enacted.

* * * *

Following a conference in the Solicitor's Office, attended by members of the staff and representatives of the General Land Office and the Grazing Service, it was agreed that in the circumstances it would be advisable that the Department establish the administrative practice of not recognizing any rights in the mining locators to the surface resources, except such as may be required for actual mining purposes and that permits or licenses to utilize the grazing resources be issued under the Taylor Act and the Federal Range Code to qualified livestock owners, with the inclusion in the present form of grazing permits or licenses of suitable provisions to that effect. It is therefore recommended that the present forms used in the issuance of grazing permits or licenses be amended to include the following or similar language:

"This permit or license applies to all Federal range within the area described, including the surface of unpatented mining locations or claims not needed by the locator of mining purposes or in extracting and removing the mineral deposits therein. It is understood that the permitee or licensee will exercise due care not to disturb or damage any mining improvements thereon and that he will be responsible for any damage to such mining improvements resulting from the grazing of his livestock upon any such claims under this permit or license."

If you approve of this procedure, it is believed that it will be of material help in the administration of the large areas in grazing districts included in numerous unpatented mining claims. In the event the suggested procedure would in any case result in litigation between the mining locators and the grazing permittees, steps may be taken through intervention on behalf of the Government, to [1720] secure a judicial determination of the respective rights of the Government and all the parties concerned, and of other important questions which should be settled as early as practicable.

/s/ C. L. Forsling
Director of Grazing

Approved: January 3, 1946

/s/ Oscar L. Chapman
Assistant Secretary

[1721] Copy Bureau of Land Management Washington 25, D.C. June 3, 1947

Memorandum To: The Secretary of the Interior From: Director Subject: Grazing on unpatented mining claims

Reference is made to a memorandum from the former Director of Grazing, approved by the Assistant Secretary on January 3, 1946, in which the Department established the administrative practice of not recognizing any rights in the mining locators to the surface resources, except such as may be required for actual mining operations and

that permits or licenses to use the grazing resources be issued under the Taylor Act and the Federal Range Code to qualified livestock owners, with the inclusion in the present form of grazing permits or licenses of suitable provision to that effect. The present forms used in the issuance of grazing permits or licenses are to be amended to include the following or similar language:

"This permit or license applies to all Federal range within the area described, including the surface of unpatented mining locations or claims not needed by the locator for mining purposes or in extracting and removing the mineral deposits therein. It is understood that the permitee or licensee will exercise due care not to disturb or damage any mining improvements thereon and that he will be responsible for any damage to such mining improvements resulting from the grazing of his livestock upon any such claims under this permit or license."

We recommend a change in the wording of this added provision by deleting therefrom "and that he will be responsible for any damage to such mining improvements resulting from the grazing of his livestock upon any such claims under this permit or license."

The Bureau is not in a position to demand that either the livestock or the mining industry satisfy the other in cases in which [1722] damage may result from joint-use operations upon the public lands. The Bureau is in a position, however, to direct its grazing licensees and permittees to exercise due care not to disturb or damage mining improvements, and this has been accomplished in the amended provision.

/s/ Thos. C. Havell
Assistant Director

Approved: June 9, 1947

/s/ Oscar L. Chapman
Acting Secretary of the Interior

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[1726] PLAINTIFF'S EXHIBIT 65

(Illegible) Requests United States Department of the Interior GEW General Land Office District Land Office Salt Lake City, Utah. June 15, 1935.

Commissioner, General Land Office, Washington, D. C.

Sir: In a recent newspaper dispatch we noted that the Supreme Court had held invalid all of the proceedings looking to disposing of oil shale placer claims where the regular assessment work had not been performed.

As you know there are very many uncompleted adverse proceedings in this office. We would be pleased to be advised as to the disposition of these papers.

If disposition of these papers may be had by transmittal to your files the space now occupied by these papers could be used to advantage for the grazing files referred to under paragraph "f" of circular 1356.

I would appreciate early answer to this letter.

Very respectfully,

Thomas F. Thomas
Register.

(illegible) Jun 17 1935 (illegible)

[1727] PLAINTIFF'S EXHIBIT 66

June 24, 1935 Mr. Joseph Bellis, Secy. The Parachute Mining District, Grand Valley, Colorado Oil Shale.

My dear Sir: I have received your letter of May 25, 1935, concerning the Little Jim, Nos. 2, 7, 8, 9, 10 and 11, oil shale placer claims.

You are advised that on June 3, 1935, the Supreme Court of the United States held in the case of Harold L. Ickes, as Secretary of the Interior, v. Virginia-Colorado Development Corporation, that the Department's challenge and adverse proceedings against the oil shale placer

claims involved went beyond the authority conferred by law. Accordingly, action on oil shale cases will remain suspended until final action is taken by the Department in the above mentioned case.

Very respectfully,

/s/ Fred W. Johnson
Commissioner

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* * * *

[1729] PLAINTIFF'S EXHIBIT 67

1532 Court Place Denver, Colorado June 8, 1935

Hon E. P. Costigan Senate Chamber Washington D.C. Jun 11 1935

Dear Sir: I am a resident of Denver and one of the locators of a group of oil shale placer mining claims located in Garfield County, Colorado. Our locations were made in 1919 and have never been questioned as to bona fides of locators or as to discovery. But after doing annual assessment work from the time of location until and including the year ending July 1, 1931 our title was adversed by direction of the Department of the Interior in office letters of October 8, 1931 and Nov. 13, 1931 on the ground of failure to perform adequate assessment work. After hearings the Land Office decided our work was adequate on six claims and not sufficient on six so declared our title to the latter six null and void. These proceedings bore the number 1333556 "N" CRB and [1730] were titled United States vs Joseph Ahearn et al. This letter notifying me of the final decision, after appeal by me to the Secretary from the Land Office decision, was dated July 6, 1932 and was marked refer to A-16739.

I am not an attorney and am at somewhat of a loss as to the method of procedure by which we may have our title cleared of the cloud placed upon it by the action of the Secretary of the Interior which the Supreme Court

of the United States in a decision given out on June 3rd was declared to be beyond his authority.

Would it be possible for you to take the matter up with the Secretary's office and so have our titles cleared?

Please advise me as to what course I should pursue and I will appreciate anything you may be able to do for me. There are other cases similar to mine in that same area.

Respectfully yours

Joseph D. Ahearn
1532 Court Place
Denver, Colorado

[1731] PLAINTIFF'S EXHIBIT 68

June 24, 1935 1333556 "N" CRB Information

Hon. Edward P. Costigan, United States Senate

My dear Senator: I have received your letter of June 12, 1935, with enclosed letter to you from Mr. Joseph D. Ahearn of 1532 Court Place, Denver, Colorado, concerning his oil shale placer claims.

The records of this office show that as a result of departmental decision of June 30, 1932, the Little Jim Nos. 2, 7, 8, 9, 10 and 11, oil shale placer claims owned or claimed by Josehp D. Ahearn and others were declared to be null and void on October 17, 1932, because of the claimants' failure to perform the annual assessment work upon the claims for the year ending July 1, 1931.

On June 31, 1935, the Supreme Court in the case of Secretary of the Interior v. Virginia-Colorado Development Corporation, involving a similar question, held that [1732] the United States is without authority to declare invalid an oil shale placer claim because of the claimant's failure to perform the annual assessment work upon such claim.

In view of the decision of the Supreme Court Mr. Ahearn's letter has been treated as an informal request

for reconsideration of the Department's decision of June 30, 1962, referred to above. It has, accordingly, been filed with the case and the entire record has been transmitted to the Secretary of the Interior for his consideration.

Mr. Ahearn will be duly advised of the final action taken upon his request.

A carbon copy of this letter is enclosed herewith.

Very respectfully,

/s/ Fred W. Johnson
Commissioner

LME: 6/14

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* * * *

[1735] PLAINTIFF'S EXHIBIT 69

Department of the Interior Washington September 3, 1935 Joseph D. Ahearn et al. A. 16739.

"N" : File 1333556. : Oil shale placers held void. : Vacated. Motion for Rehearing Official Copy, not to be taken from the record.

By decision of June 30, 1932, the Department, in affirmance of a decision by the Commissioner of the General Land Office, held the Little Jim oil shale placer claims numbered 2, 7, 8, 9, and 11 for lands situate in T. 5 S., R. 95 W., and T. 6 S., R. 96 W., 6th P. M., Colorado, null and void on account of failure to perform assessment work. On October 17, 1932, the Commissioner declared Little Jim No. 10 claim null and void because it had been inadvertently omitted from the departmental decision although it had been included in the decision appealed from.

Josehp D Ahearn has filed an informal motion for rehearing.

In the case of Ickes v. Virginia-Colorado Development Corporation, decided June 3, 1935, the Supreme Court of the United States held that failure to do assessment work on mining claims gave the Government no right to de-

clare forfeiture and that the mining claimants lost no rights by such failure.

Received Sep 9 1935 C. L. O.

[1736] In view of this decision by the Supreme Court the action of the Department in declaring the claims involved forfeited was without authority of law and void. It is noted that no application for patent or other claim has been filed in the Land Department for the placers involved. This means that the matter will stand as if no adverse proceedings had been brought. If and when application for patent shall be filed for these placer claims such application will be considered on its merits. In the meantime, so far as the records of the Land Department are concerned, the lands involved appear and are regarded as vacant and unappropriated public lands.

The departmental decision of June 30, 1932, and the adverse proceedings and the Commissioner's decision are vacated.

(Sgd) Charles West,
Under Secretary.

[1737] PLAINTIFF'S EXHIBIT 70

* * * *

The Shale Oil Company Decided June 24, 1935

Mining Claim—Validity—Cancelation—Authority of Secretary of the Interior.

The Secretary of the Interior has authority to determine that a mining claim is invalid for lack of discovery, for fraud, or other defect, or that it is subject to cancelation for abandonment.

Mining Claim—Oil Shale Lands—Assessment Work—Default—Who May Challenge Folling Default.

Under section 2324 of the Revised Statutes, a default in performance of annual work on a mining claim renders it subject to relocation by another claimant, but does not affect the locator's right as between him and the United States, and he is entitled to preserve his claim by

resumption of work after default and before such relocation.

[1738] Decisions of the Department of the Interior

Mining Claim—General Leasing Act—Excepting Clause in Section 37.

The excepting clause in section 37 of the General Leasing Act, saving existing valid claims "thereafter maintained in compliance with the laws under which initiated, which claims may be perfected under such laws," held to preclude the United States from declaring a forfeiture of a mining claim, otherwise valid, for default in performance of assessment work.

Prior Decisions and Regulations Overruled.

The decisions and regulations of the Land Department, in so far as in conflict with the decision herein, overruled.[1]

Walters, First Assistant Secretary:

* * * *

[1739] By letter of May 26, 1934, in reply to a request for oral argument in support of the appeal, the Department stated that the question whether the Department has authority to forfeit oil shale placer claims by reason of defaults in the performance of assessment work has recently been answered in the negative by the Court of Appeals of the District of Columbia in the case of Ickes v. Virginia-Colorado Development Corporation, but that a petition for certiorari had been granted by the Supreme Court, and agreed to suspend action on the appeal in the instant case pending the decision of the Supreme Court in the Virginia-Colorado Development Corporation case.

* * * *

[1740] The Supreme Court, adverting to the fact that the validity of the locations there involved was not questioned, except as to failure to perform assessment work, held that plaintiff (The Virginia-Colorado Development Corporation) lost no rights by failure to do the assessment work; that failure gave the Government no right of forfeiture; that the plaintiff came directly within the exception contained in Section 37 of the Leasing Act saving existing valid claims "thereafter maintained in

compliance with the laws under which initiated, which claims may be perfected under such laws"; that the challenge to the valid existence of the claims had no proper basis; and that the Department's challenge, its adverse proceedings, and the decision set forth in the bill, went beyond the authority conferred by law.

In view of this opinion of the court, the adverse proceedings and decision of the Commissioner therein in the instant case must be held as without authority of law and void. The above-mentioned decision of the Department in the Virginia-Colorado Development Corporation case and the instructions of June 17, 1930, are hereby recalled and vacated. The above-mentioned decisions in the cases of Francis D. Weaver and Federal Oil Shale Company and other Departmental decisions in conflict with this decision are hereby overruled. The Commissioner's decision is reversed and the record in the case remanded with instructions to reinstate the application and entry in toto and dispose of the same unaffected by the default in the performance of assessment labor, and if all else is found regular, to clear-list the application for patent.

Reversed and remanded.

[1741] PLAINTIFF'S EXHIBIT 71

Address only the Commissioner of the General Land Office United States Department of the Interior General Land Office Washington, Jul 6 - 1935 10

In reply please refer to 1606652 "N" CRB Oil shale records. Instructions.

Register, Salt Lake City, Utah.

Sir: Further reference is had to your letter of June 15, 1935, relative to records in contest cases involving oil shale placers, answered June 28, 1935. On June 24, 1935, the Department, in the case of the Shale Oil Company, Denver mineral entry 042552, stated that in view of the decision of the Supreme Court in the case entitled Ickes v. Virginia-Colorado Development Corporation, hold-

ing that the Department is without authority to challenge the validity of an oil shale placer on account of a failure to perform the annual assessment work, all previous departmental decisions in conflict therewith "are hereby overruled".

Said departmental decision has now been promulgated [1742] and in view thereof and of the Department's action in remanding the Shale Oil Company case with instructions to reinstate the application and entry in toto and dispose of the same unaffected by the default in the performance of annual assessment work, you are instructed to close out on your records and transmit to this office all contest cases involving solely the question of a failure to perform annual assessment work and failure to resume work on oil shale placers prior to the date of a challenge by the United States to the valid existence of the claims, where no answer has been filed by the claimants. In all cases involving only the question of annual assessment work where answer has been filed by any of the contestees, you will transmit the records to this office without action. You will retain in your files, subject to further instructions from this office, all contest cases involving oil shale placers wherein charges have been made involving other questions than that above stated, even if a charge has also been made in that regard.

In your response hereto refer to this letter by date and number.

Very respectfully,

Antoinette (name illegible)
Commissioner.

7-1 edt

[1743] PLAINTIFF'S EXHIBIT 72

Address only the Commissioner of the General Land Office 2 x 1 x S. A. C.

United States Department of the Interior General Land Office Washington 7/29/35

In reply please refer to 1290989 "N" CRB

Mountain States Mineral Land Company, et al.

Contest No. 11823 dismissed. Case closed. Instructions.

Register, Denver, Colorado.

Sir:

* * * *

[1744] On June 3, 1935, the Supreme Court decided in the case of Ickes v. Virginia-Colorado Development Corporation, that the United States has no right to declare oil shale placers null and void because of failure on the part of the claimants to perform annual assessment work thereon, and on June 24, 1935, the Department in the case of the Shale Oil Company, Denver, mineral application 042552, recalled and vacated its decision in the Virginia-Colorado Development Corporation case, and overruled its previous decisions in conflict with the Supreme Court's decision.

From the foregoing it is clear that the adverse proceedings in this case are invalid for any purpose. Accordingly, contest No. 11823 is dismissed and the case is closed. Advise the parties hereof.

Several contest cases involving oil shale placers are now pending in your office. In view of the decisions referred to hereinabove, you are instructed to close out on your records and transmit to this office all contest cases involving solely the question of a failure to perform annual assessment work, and failure to resume work on oil shale placers prior to the date of a challenge by the United States to the valid existence of the claims, [1745] where no answer has been filed by the claimants. In all cases involving only the question of annual assessment work where answer has been filed by any of the contestees you will transmit the record to this office without action.

You will retain in your files, subject to further instructions from this office all contest cases involving oil shale placers wherein charges have been made involving other questions than that above stated, even if a charge has also been made in that regard.

In your response hereto refer to this letter by date and number.

Very respectfully,

Sgd Fred W Johnson
Commissioner.

LMN 7/18

[1746] PLAINTIFF'S EXHIBIT 73

4 Address only the Commissioner of the General Land Offise 11 x 1 x S. A. C.

United States Department of the Interior General Land Office Washington Jul 30 1935

In reply please refer to 1412210 "N" CRB

United States vs. F. V. Larson et al

Contest No. 6255. Register's decision reversed. Contest dismissed. Case closed.

Register, Salt Lake City, Utah.

Sir: June 30, 1931, adverse proceedings involving the validity of the Hell Hole Nos. 1 to 4, inclusive, 7 to 44, inclusive, and 49 and 50 oil shale placers, were ordered on the charge that annual assessment work to the value of $100 was not performed upon each or any one of the claims for the year ending July 1, 1930, and that work had not been resumed thereon when challenges to the validity thereof were posted thereon on behalf of the United States.

Notice issued, answer denying the charge was filed, hearing was duly held, and on July 12, 1933, you recommended that the claims be declared null and void. [1747] August 24, 1933, you transmitted the record to this office.

On June 3, 1935, the Supreme Court decided in the case of Ickes vs. Virginia-Colorado Development Corpor-

ation, that the United States has no right to declare null and void oil shale placers because of failure on the part of the claimants thereof, to perform annual assessment work thereon, and on June 24, 1935, the Department, in the case of the Shale Oil Company, Denver mineral application 042552, recalled and vacated its decision in the Virginia-Colorado Development Corporation case and overruled its previous decisions in conflict with the Supreme Court's decision.

From the foregoing it is clear that the adverse proceedings in this case are invalid for any purpose, and your decision, therefore, is reversed, the contest is dismissed and the case closed. So note your records and advise the parties in interest by ordinary mail.

Very respectfully,

Fred W. Johnson
Commissioner.

LMN 7/18

[1748] PLAINTIFF'S EXHIBIT 74

Address only the Commissioner of the General Land Office

United States Department of the Interior General Land Office Washington Jul 31 1935

In reply please refer to 1606652 "N" CRB Oil shale records. Instructions.

Register, Evanston, Wyoming.

Sir: Several contests involving the matter of a failure to perform the annual assessment work on oil shale placer mining claims or to resume work thereon before a charge to the valid existence of the claims was made by the United States are pending in your office.

On June 3, 1935, the Supreme Court in the case of Ickes, Secretary of the Interior, v. Virginia-Colorado Development Corporation, held that the United States is without authority to challenge the validity of an oil shale placer on account of failure to perform the annual assess-

ment work thereon. June 24, 1935, the Department in the case of the Shale Oil Company, Denver mineral entry 042552, stated that in view of the above decision the [1749] Department is without authority to challenge the validity of an oil shale placer on account of failure to perform annual assessment work, and over-ruled all previous Departmental decisions in conflict therewith.

In view of the said decisions, you are instructed to close out on your records and transmit to this office all contest cases involving solely the question of a failure to perform annual assessment work and failure to resume work on oil shale placers prior to the date of a challenge by the United States to the valid existence of the claims where no answer has been filed by the claimants. In all cases involving only the question of annual assessment work where answers have been filed by any of the contestees, you will transmit the records to this office without action.

You will retain in your files, subject to further instructions from this office, all contest cases involving oil shale placers wherein charges have been made involving other questions than that above stated, even if a charge has also been made in that regard.

In your response hereto, refer to this letter by date and number.

Very respectfully,

Fred W. Johnson
Commissioner.

7-27-gmr

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* * * *

[1751] PLAINTIFF'S EXHIBIT 75

July 31, 1935 1606652 "N" CRB Oil shale records. Instructions.

Register, Cheyenne, Wyoming.

Sir: Several contests involving the matter of a failure to perform the annual assessment work on oil shale

placer mining claims or to resume work thereon before a charge to the valid existence of the claims was made by the United States are pending in your office.

On June 3, 1935, the Supreme Court in the case of Ickes, Secretary of the Interior, v. Virginia-Colorado Development Corporation, held that the United States is without authority to challenge the validity of an oil shale placer on account of failure to perform the annual assessment work thereon. June 24, 1935, the Department in the case of the Shale Oil Company, Denver mineral entry 042552, stated that in view of the above decision the

* * * *

[1753] Department is without authority to challenge the validity of an oil shale placer on account of failure to perform annual assessment work, and over-ruled all previous Departmental decisions in conflict therewith.

In view of the said decisions, you are instructed to close out on your records and transmit to this office all contest cases involving solely the question of a failure to perform annual assessment work and failure to resume work on oil shale placers prior to the date of a challenge by the United States to the valid existence of the claims where no answer has been filed by the claimants. In all cases involving only the question of annual assessment work where answer has been filed by any of the contestees, you will transmit the records to this office without action.

You will retain in your files, subject to further instructions from this office, all contest cases involving oil shale placers wherein charges have been made involving other questions than that above stated, even if a charge has also been made in that regard.

In your response hereto,refer to this letter by date and number.

Very respectfully,

Fred W. Johnson
Commissioner.

7-27-gmr

[1754]

PLAINTIFF'S EXHIBIT 76

Department of the Interior Washington Jul 30 1935
Address only the Secretary of the Interior A. 17353.
United States v. Fred A. Bloss et al.

"N" 1375534. Oil placers held void. Reversed.
Appeal From The General Land Office.

O. E. Daniels, jr. and Barge Hicky, among the co-owners of the Big Springs Nos. 1 to 6, inclusive, oil shale placers, have appealed from a decision of the Commissioner of the General Land Office dated February 18, 1933, which held upon the evidence adduced in adverse proceedings that the claims were void.

The sole charge against the validity of the claims was as follows:

"That annual assessment work to the value of $100 was not performed upon each or any one of the Big Springs Nos. 1 to 6, inclusive, oil shale placers for the year ending July 1, 1931, and that work had not been resumed on said claims September 1, 1931, when challenges to the validity thereof were posted thereon in behalf of the United States."

For the reasons fully stated in departmental decision of June 24, 1935, entitled The Oil Shale Company, the challenge to the validity of the claim, the adverse proceedings, and the decision [1755] therein were without authority of law.

The Commissioner's decision is reversed and proceedings dismissed.

T. A. Walters
First Assistant Secretary.

104633

[1756]

PLAINTIFF'S EXHIBIT 77

Department of the Interior Washington Jul 30 1935

Address only The Secretary of the Interior A. 17342. 10-3 General

United States v. The U. S. Oil Shale Company. "N" 13843406. Contest No. 12009. Oil shale placers held void. Modified.

Appeal From The General Land Office.

August 16, 1930, proceedings were instituted charging that annual assessment work to the value of $100 was not performed upon each or any one of the Golden City Nos. 1 to 36, inclusive, 40 to 42, inclusive, 44 to 47, inclusive, and Sunny Brook Nos. 1 to 37, inclusive, oil shale placers for the year ending July 1, 1930, and that work had not since been resumed.

Notice thereof was served on the U. S. Oil Shale Company, the record holder of the mining title, who demurred to the charge, contending that the Department was without authority to prefer it, and filed answer admitting the charge as to the Golden City Nos. 7 to 27, 32 to 35, and 44 to 47, inclusive, but denying it as to the remaining claims. By decision of April 8, 1931, the Commissioner of the General [1757] Land Office overruled the demurrer, held void the claims last above named, and directed that the hearing proceed on the charge against the remaining claims, namely, Golden City Nos. 1 to 6, inclusive, 28 to 31, inclusive, 36, 40 to 42, inclusive, and Sunny Brook Nos. 1 to 37. The Commissioner's action was affirmed by the departmental decision of August 7, 1931. A like charge was subsequently made against certain of the last-named claims, alleging a similar default for the year ending July 1, 1931. Hearing was held March 10, 1932. Upon review of the evidence, the Commissioner, by decision of February 21, 1933, held the charge that the work had not been done for the year 1930, had been sustained as to Golden City Nos. 3 to 6, inclusive, 28 to 31, inclusive, 36, 40 to 42, inclusive, Sunny Brook Nos. 14 to 37, inclusive, and held such

claims null and void. Golden City No. 36 was held null and void for the further reason that the evidence showed it had been abandoned.

As fully set forth in the decision of the Department of June 24, 1935, in the case of The Shale Oil Company, 55 I. D. ——, the Supreme Court in Ickes v. Virginia-Colorado Development Corp., decided June 3, 1935, that the failure to do assessment work gave the Government no right to forfeit a mining claim; that charges based upon such defaults and decisions thereon were without proper legal basis. The decision of the Commissioner of April 8, 1931, declaring the Golden City Nos. 7 to 27, 32 to 35, 44 to 47, inclusive, to be nullities [1758] and his decision of February 21, 1933, declaring the Golden City Nos. 3 to 6, 28 to 31, 40 to 42, inclusive, Sunny Brook Nos. 14 to 37, to be nullities were without effect on defendant's rights, and must be reversed. Departmental decision of August 7, 1931, above mentioned, is hereby vacated. As the uncontradicted evidence shows that Golden City No 36 was abandoned by the defendant company because of a claim thereto by one Huelit, the Commissioner's decision as to that claim is affirmed.

T. A. Walters

First Assistant Secretary.

104633

[1759]

PLAINTIFF'S EXHIBIT 78

G. L. O. 1304251 "N" AKJ Denver contest August 1, 1935

United States vs K. C. Schuyler
Contest dismissed; case closed in part.
Register, Denver, Colorado

Sir: Pursuant to a field investigation and report this office, by letter "N" of March 3, 1932, ordered proceedings against certain oil shale placer mining claims located in T. 7 S., R. 97 W., 6th P. M., Coloraod, named and described as follows:

K. C. Schuyler No. 2, being the NE ¼ K. C. Schuyler No. 3, being the NW ¼ of Sec. 24 of said township, located July 26, 1917, with E. R. Ong, G. H. and P. C. Hotz, and M. H., W. F., K.A., B. M., and M. H. Callahan, named as locators; Harold Shoup No. 1, being the SE ¼, Harold Shoup No. 2 being the NE ¼, Harold Shoup No. 3, being the NW ¼ and Harold Shoup No. 4, being the SW ¼ of Sec. 23 of said township, located September 29, 1917, with W. F., H. M., K. A., M. H., and B. M. Callahan, P.C. and G. H. Hotz and named as locators.

[1760] The proceedings were based on charges preferred as follows:

1. That the K. C. Schuyler Nos. 2 and 3 claims were not located for the use and benefit of the parties whose names were used in making the locations, but for Ralph Hartzell, K. C. Schuyler, James Doyle and the Callahan Oil Shale Company, the organization of which was in contemplation at the time the locations were made.

2. That G. H. Hotz, P. C. Hotz, W. F., K. A., B. M., and H. M. Callahan were dummy locators, their names having been used by M. H. Callahan without their knowledge and consent in locating the K. C. Schuyler Nos. 2 and 3 claims for the purpose of securing to the Callahan Oil Shale Company, or other parties more land under the location than they themselves could lawfully locate thereunder.

3. That the Harold Shoup Nos. 1 to 4, inclusive, claims were not located for the benefit of the parties whose names were used in making the locations but for Karl C. Schuyler, Ralph Hartzell, James Doyle and M. H. Callahan.

4. That W. F., H. M., K. A., B. M. Callahan and P. C., G. H. Hotz and E. R. Ong were dummy locators, their names having been used by M. H. Callahan without their knowledge and consent in locating the Harold Shoup Nos. 1 to 4 claims for the purpose of securing for himself, K. C. Schuyler, Ralph Hartzell and James Doyle more land under the locations than they themselves could lawfully locate thereunder.

5. That annual assessment work to the value of $100 was not performed upon each or any one of the K. C. Schuyler Nos. 2 and 3 and Harold Shoup Nos. 1, 2, 3 and 4 oil shale placers for the year ending July 1, 1931, and that work had [1761] not been resumed on said claims October 20, 1931, when challenges to the validity thereof were posted thereon on behalf of the United States.

On August 1923, K. C. Schuyler and George A. Taff attempted to change the boundaries of said claims so as to include in each claim portions of the same land not theretofore included therein. As sought to be amended, the claims were so described by mets and bounds as to cover the following described grounds, to wit:

Schuyler No. 2, the N ½ N ½ N ½ of Sec. 23 and N ½ N ½ N ½ of Sec. 24.

Schuyler No. 3, the S ½ N ½ N ½ of Sec. 23 and S ½ N ½ N ½ Sec. 24.

Harold Shoup No. 1, the N ½ S ½ of Sec. 23.

Harold Shoup No. 2, the N ½ S ½ N ½ of Sec. 23 and N ½ S ½ N ½ of Sec. 24.

Harold Shoup No. 3, the S ½ S ½ N ½ of Sec. 23, and S ½ S ½ N ½ Sec. 24.

Harold Shoup No. 4, to cover the S ½ S ½ of Sec. 23.

You are directed to advise the claimants that, as no location of lands valuable for oil shale could be made after the date of the leasing act of February 25, 1920 (41 Stat. 437), the amendments, which seek to include land within a claim which was not embraced therein on the date of said act, are in effect new locations as to such land [1762] and to that extent they were null and void and would not be recognized by this office.

Notice of the charges, which also included the statement and declaration regarding the amendments, was issued and served and in approprite time Karl C. Schuyler, for himself and the contestees named, filed answer, in which he admitted that the boundaries of the claims had been changed so as to include new land as to each of them, but denied every other allegation contained in the charges, or that he had not the right to include in

each claim the new ground embraced therein, and applied for a hearing.

Pursuant to notice and stipulation, evidence limited to charge 5 was taken September 10 to 15, 1932, before a notary public at Glenwood Springs, while at the final hearing before you at Denver, evidence dealing with the alleged invalidity of the locations under charges 1 to 4 was introduced the same being carbon copies of the evidence previously introduced in the case of the United States vs. Karl C. Schuyler et al, under contest No. 11667, serial 035333, involving the Annex and Black Bess oil shale placers upon similar charges.

[1763] The record together with briefs and argument by counsel for contestee was transmitted by you under date of January 25, 1934, without decision or recommendation.

The charges involving the Annex and Black Bess claims, in contest 11667, were, as above stated, similar to charges 1 to 4, inclusive, in the present case. The locators of those claims, namely, W. F. Callahan, H. M. Callahan, B. M. Callahan, K. C. Callahan, M. H. Callahan, P. C. Hotz, G. H. Hotz, and E. R. Ong are the same persons, the record shows named as locators of the K. C. Schuyler Nos. 2 and 3 and Harold Shoup Nos. 1, 2, 3 and 4 claims herein described.

The burden was upon the Government to prove, as the charges allege, that the locators were not locators in good faith, in that their names were used without their knowledge and consent by M. H. Callahan for the purpose of securing the land for the use and benefit of the Callahan Oil Shale Company, Ralph Hartzell, K. C. Schuyler and James Doyle. Finding the evidence to be insufficient to sustain the charges involving the Annex and Black Bess claims that contest was, by office letter "N" of February 6, 1935, finally dismissed and the case closed. Likewise [1764] the evidence, after a careful review of the same in connection with this case, has been found to be insufficient to sustain the allegations contained in charges 1, 2, 3 and 4 in this case also.

To the extent of these charges, therefore, the contest is hereby dismissed, subject to the right of appeal by

the Special Agent in Charge to the Secretary of the Interior within 30 days from notice hereof.

As to charge 5, which alleges failure of the claimants to perform upon each or any of the claims involved annual assessment work of the value of $100 for the year ending July 1, 1931, the Supreme Court of the United States on June 3, 1935, held in the case of Ickes, Secretary of the Interior, vs. Virginia-Colorado Development Corporation, that the oil shale claimant lost no rights by failure to do assessment work on its claims; that such failure gave no right to declare the claims null and void; and that the proceedings brought by the Government against the claims, based solely on that ground, went beyond the authority conferred by law and did not affect the validity of the claims.

[1765] As charge 5 had no foundation in law therefore, no consideration of the evidence introduced concerning it is necessary, and to that extent the proceedings are hereby dismissed and the case closed.

As to the question of annulment of the amended locations, since no application for patent has been filed no consideration of the matter in that respect is deemed necessary at this time the decision being confined to the issues raised by the charges only.

Notify the special agent in charge, also the contestees or their attorney of record, hereof, and in due time report.

Very respectfully,

/s/ Fred W. Johnson
Commissioner

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[1774]

PLAINTIFF'S EXHIBIT 79

August 19, 1935 1406966 "N" CRB Contest No. 5991 dismissed. Case closed.

Register, Salt Lake City, Utah.

Sir: Adverse proceedings against the Lyons No. 2 oil shale placer, S½ NE¼ Sec. 24, T. 10 S., R. 6 E, S.L.M., were directed by office letter of May 8, 1931. Title to the claim appears in E. L. Soules, R. M. Teachout and L. J. Lyons.

Subsequently, certain proceedings were had resulting in a hearing on April 18, 1934, at which the attorney for Teachout appeared and stated that his client consents to the cancellation of the location and the closing of the case, May 24, 1934, you transmitted the record to this office where it was suspended pending final decision in the case of Ickes vs. Virginia-Colorado Development Corporation, which was then before the Courts.

On June 3, 1935, the Supreme Court held in the case last referred to that an oil shale placer claimant [1775] lost no rights by failure to do the annual assessment work on his claims, that his failure gave the Government no right to declare the claims null and void, and that the proceedings brought by the Government against the claims on the sole ground of failure to perform such work went beyond the authority conferred by law and did not affect the validity of the claims. On June 24, 1935, the Department, in the case of the Shale Oil Company, Denver mineral application 042552, recalled and vacated its decision in the Virginia-Colorado Development Corporation case, and overruled its previous decisions in conflict with the decision of the Supreme Court.

The only charge involved in Contest No. 5591 relates to a failure of the claimants to perform the annual assessment work. In view of the decisions referred to above it appears that the action previously taken by this office in the said contest was without authority of law and the contest is accordingly dismissed and the case is

closed. Advise the parties in interest who have been served with notice of the charge hereof by ordinary mail.

Very respectfully,

/s/ Fred W. Johnson
Commissioner

LMN 8/16

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* * * *

[1778]

PLAINTIFF'S EXHIBIT 80

August 19, 1935 1337598 "N" CRB Oil Shale contest dismissed. Case closed.

Register, Denver, Colorado

Sir: May 14, 1929, adverse proceedings were directed against the validity of the Hydrocarbon No. 73 oil shale placer, title to which appears in the Shale Oil Company, Grand Junction, Colorado, on the charge that annual assessment work to the value of $100 was not performed upon the claim for the year ending July 1, 1929, and that work has not been since resumed.

November 8, 1932, you reported that notices were duly issued and served and that answer had been filed. The case has been suspended in this office pending a determination by the courts of the question of the right of the United States to proceed against oil shale claimants on the ground stated in the charge outlined above.

[1779] On June 3, 1935, the Supreme Court of the United States held that the United States did not have the right to question of validity of an oil shale placer on the ground stated, and on June 24, 1935, the Department, pursuant to the mandate of the Supreme Court recalled and vacated its decision in the case of Ickes vs. Virginia-Colorado Development Corporation, and upon the basis of the Supreme Court's decision the Department overruled its previous decisions in conflict therewith.

In view of the decisions referred to above it is clear that the action previously taken by this office in initiat-

ing the said contest was without authority of law and the contest is accordingly dismissed and the case in closed. Advise the parties hereof by ordinary mail.

Very respectfully,

/s/ Fred W. Johnson
Commissioner.

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* * * *

[1792] PLAINTIFF'S EXHIBIT 82

In reply refer to [illegible] - "N" Commissioner of the General Land Office

United States Department of the Interior General Land Office Washington

Mar 30 1940 Oil shale records. Instructions. File copy

Surname
Wilkins
Cummiford
Bradshaw
Cunningham
(illegible)
Wolfsohn

Memorandum for the Register, Denver, Colorado.

Several contests involving the matter of a failure to perform the annual assessment work on oil shale placer mining claims or to resume work thereon before a charge to the valid existence of the claims was made by the United States, are pending in your office.

In view of the rulings made in the case of Ickes, Secretary of the Interior vs. Virginia-Colorado Development Corporation, decided June 3, 1935, and in the case of Shale Oil Company, mineral entry Denver 042552, decided June 24, 1935, the previous decisions of the Department declaring oil shale placer mining claims forfeited because of the failure of the claimants to perform

the annual assessment work or to resume work before a charge to the valid existence of the claims was made, were held to be without force and effect. In view thereof, you are instructed to close on your records all contest cases involving solely the question of a failure to perform annual assessment work and failure to resume work on oil shale placers prior to the date of a challenge by the United States to the valid existence of the claim. A list of these cases should be transmitted to this office.

Also furnish this office with a list of all other oil shale contests wherein charges were made involving other questions than that above stated, even if a charge was also made in that regard.

In response hereto, refer to this memorandum by date and number.

Fred W. Johnson
Commissioner.

3-27-imc Copy for General Land Office files

[1793] PLAINTIFF'S EXHIBIT 83

1606652 "N"

United States Department of the Interior General Land Office District Land Office 342 Postoffice Bldg., Denver, Colorado April 26, 1940

The Commissioner, General Land Office, Washington, D.C. : Report Oil Shale Records

My dear Mr. Commissioner: Referring to your letter "N" of March 30, 1940, directing this office to close all contest cases against oil shale placers involving solely the question of a failure to perform annual assessment work and failure to resume work on oil shale placers, in view of the rulings made in the case of Ickes, Secretary of the Interior vs. Virginia-Colorado Development Corporation, decided June 3, 1935, in the case of Shale Oil Company, Denver 042552, you are advised that this office dismissed and closed all such cases that were in the office, following

instructions given in your letter 1290989 "N" of July 29, 1935. A list of all cases closed pursuant to your letter of July 29,1935, on that charge, is herewith attached.

I also transmit a list of cases remaining in this office, containing that charge in some cases, but all cases containing other charges. Service of notice has never been obtained on all Contestees in these cases, because it has not been possible to obtain addresses.

Very truly yours,

Jessie M Gardner.
Register

fr. (Received stamp)

* * * *

[1810] PLAINTIFF'S EXHIBIT 84

In reply refer to 1606652 "N" Address only the Commissioner of the General Land Office

United States Department of the Interior General Land Office Washington

Oil shale contest. Mar 6 - 1941

File copy
Surname
Wilkinson
(illegible)
Altizer

Memorandum for the Register, Denver, Colorado.

Reference is made to your letter of April 26, 1940, and the list of oil shale cases attached thereto which shows the miscellaneous and contest numbers, names of the contestees and of the claims involving charges other than that of the failure of the claimants to perform the annual assessment work or to resume work before a challenge to the validity of the claims was posted thereon.

In view of the ruling made in the case of Ickes, Secretary of the Interior, vs. Virginia-Colorado Development

Corporation, decided June 3, 1935, the adverse proceedings against the oil shale claims contained in the list are hereby dismissed as to the charge relating to assessment work and the cases are closed to that extent.

You will issue notices of the other charges to the parties not already served with notice and submit reports thereof in the usual manner.

Fred. W. Johnson
Commissioner

:c: D.I. (3) 3-4jph Official copy Copy for General Land Office files

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* * * *

[1811] PLAINTIFF'S EXHIBIT 85

In reply refer to 1606652 "N" Address only to the Commissioner of the General Land Office

United States Department of the Interior General Land Office Washington

Aug 9 - 1940 Oil shale records. Instructions. File copy
Surname
(illegible)
Altizer

Memorandum for the Register, Salt Lake City, Utah:

Several contests involving the matter of a failure to perform the annual assessment work on oil shale placer mining claims or to resume work thereon before a charge to the valid existence of the claims was made by the United States, are pending in your office.

In view of the rulings made in the case of Ickes, Secretary of the Interior vs. Virginia-Colorado Development Corporation, decided June 3, 1935, and in the case of Shale Oil Company, mineral entry Denver 042552, decided June 24, 1935, the previous decisions of the Department declaring oil shale placer mining claims forfeited because of the failure of the claimants to perform the

annual assessment work or to resume work before a charge to the valid existence of the claims was made, were held to be without force and effect. All contest cases involving this charge alone have been dismissed and closed.

You are instructed to furnish this office with a list of all oil shale contests pending in your office wherein charges were made involving the question above stated in conjunction with other charges.

In response hereto, refer to this memorandum by date and number.

Fred W. Johnson
Commissioner

(Illegible) Official copy Copy for General Land Office files

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[1813] PLAINTIFF'S EXHIBIT 87

In reply refer to 1606652 "N" Address only the Commissioner of the General Land Office

United States Department of the Interior General Land Office Washington

Aug 9 - 1940 Oil shale records. Instructions. File copy
Surname
Bradshaw
Altizer

Memorandum for the Register, Cheyenne, Wyoming.

Several contests involving the matter of a failure to perform the annual assessment work on oil shale placer mining claims or to resume work thereon before a charge to the valid existence of the claims was made by the United States, are pending in your office.

In view of the rulings made in the case of Ickes, Secretary of the Interior vs. Virginia-Colorado Development Corporation, decided June 3, 1935, and in the case of

Shale Oil Company, mineral entry Denver 042552, decided June 24, 1935, the previous decisions of the Department declaring oil shale placer mining claims forfeited because of the failure of the claimants to perform the annual assessment work or to resume work before a charge to the valid existence of the claims was made, were held to be without force and effect. All contest cases involving this charge alone have been dismissed and closed.

You are instructed to furnish this office with a list of all oil shale contests pending in your office wherein charges were made involving the question above stated in conjunction with other charges.

In response hereto, refer to this memorandum by date and number.

Fred W. Johnson
Commissioner

(illegible) Official copy Copy for General Land Office files.

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[1815] PLAINTIFF'S EXHIBIT 89

In reply refer to 1606652 "N" Address only the Commissioner of the General Land Office

United States Department of the Interior General Land Office Washington

Aug 9 - 1940 Oil shale records. Instructions. File copy
Surname
Bradshaw
Altizer

Memorandum for the Register, Evanston, Wyoming:

Several contests involving the matter of a failure to perform the annual assessment work on oil shale placer mining claims or to resume work thereon before a charge

to the valid existence of the claims was made by the United States, are pending in your office.

In view of the rulings made in the case of Ickes, Secretary of the Interior vs. Virginia-Colorado Development Corporation, decided June 3, 1935, and in the case of Shale Oil Company, mineral entry Denver 042552, decided June 24, 1935, the previous decisions of the Department declaring oil shale placer mining claims forfeited because of the failure of the claimants to perform the annual assessment work or to resume work before a charge to the valid existence of the claims was made, were held to be without force and effect. All contest cases involving this charge alone have been dismissed and closed.

You are instructed to furnish this office with a list of all oil shale contests pending in your office wherein charges were made involving the question above stated in conjunction with other charges.

In response hereto, refer to this memorandum by date and number.

Fred W. Johnson
Commissioner.

(Illegible) Official copy Copy for General Land Office files

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[1817] PLAINTIFF'S EXHIBIT 91

United States Department of the Interior General Land Office Branch of Field Examination 355 Post Office Building Salt Lake City, Utah June 5, 1942

Refer to File: 1606652 B.F.E. Oil Shale Cases, Colorado

[Handwritten notation] Reports rel to pending

: Advising of status of oil : shale cases in Colorado.

Memorandum for the Supervisor, Branch of Field Examination, General Land Office:

* * * *

When I took charge of this Region in January, 1935, there were 4203 pending oil shale cases. In practically all of these cases adverse proceedings had been directed on the ground that the required assessment work had not been done on the claims,

* * * *

[1818] As a result of various conferences held between myself and the Director of Investigations, and as a result of some correspondence, I was finally authorized by the then Director of Investigations on August 21, 1935, to close all of those cases in which adverse proceedings had been directed on the ground that the assessment work had not been performed, and to keep open only those cases in which adverse proceedings had been directed on the ground of non-discovery. The cases were examined in detail, and as a result, all except 67 were closed during the months of January and February, 1936. It required considerable time to examine all of the cases and prepare appropriate lists.

* * * *

[1820] N. F. Waddell
Regional Field Examiner

NFW:DB

[1821] PLAINTIFF'S EXHIBIT 91-A

1606652 General Land Office Office communication July 29, 1942

Memorandum for Mr. Wolfsohn.

* * * *

Following this decision the Department in its instructions of June 17, 1930, modified the prior instructions of February 28, 1930, and directed that challenges made to the validity of an oil shale claim for failure to do the annual assessment work must be initiated prior to the

commencement of patent proceedings, including the commencement of publication of notice. Following these instructions every oil shale claim of record during the years 1930 to 1933 was examined and a notice posted on each claim, where the field examination justified such action, stating that possession of the claim had been taken in the name of the United States. The Government expended thousands of dollars in its attempt to clear the records of these supposedly invalid oil shale claims only to be overruled by the United States Supreme Court in the case of Virginia-Colorado Development [1822] Company (295 U.S. 639). Briefly, the Supreme Court held in this latter case that a mining claimant lost no rights by failure to do the assessment work; that failure gave the Government no right of forfeiture, and that the holder of such mining claim came directly within the exception contained in section 37 of the leasing act of 1920 saving existing valid claims "thereafter maintained in compliance with the laws under which initiated, which claims may be perfected under such laws"; that the challenge to the valid existence of the claims had no proper basis; and that the Department's challenge, its adverse proceedings, and the decision set forth in the bill went beyond the authority conferred by law. Following this decision the Department in the case of Shale Oil Company decided June 24, 1935 (55 I.D. 287), revoked its instructions of June 17, 1930 (53 I.D. 131). This briefly resulted in the cessation of any activities on the part of this office in clearing the oil shale claims, since no new oil shale placer claims can be initiated since the 1920 leasing act, and the Government cannot defeat the claims or take possession because of failure of the claimant to perform annual assessment work. The only action we can take is to challenge the claim on the general ground of no discovery or abandonment. This already has been done in the few cases where the facts warranted the preferring of such charges.

* * * *

Under the circumstances, therefore, about all we can do is to wait until the Gulf Oil Corporation or any other oil shale placer claimants present applications for patent

and then see that the showing made in each case justifies a patent. The Grazing Service has been eager for years to clear the records of this oil shale as the lands are within grazing districts.

• • • •

Howell
Supervisor of the Branch
of Adjudication

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[1827] PLAINTIFF'S EXHIBIT 95

Oil Shale Claims Patented on Applications Filed Subsequent to the Virginia-Colorado Decision, June 3, 1935

[1828]

Names and numbers of Claims	Contest Number	Patent Number	Date of Patenting	Number of Claims	Acreage of Claims
Coral T. 1, 2, 8, 9	12610				
Coral T. 26, 28-30	13028	1128255	2/ 9/50	8(of 10)	1,277.45
Clear Creek	12906	1129498	7/24/50	1	118.47
Lucky Strike 15	13030	1130493	12/ 4/50	1	29.30
Coral T. 39, 40	12420	1130494	12/ 4/50	2	315.78
Last Chance 1-3	13001	1130593	12/18/50	3(of 6)	480.00
Triumph 21-28	12021	1130594	12/18/50	8	1,271.84
A.D.1; J.D.5	12179				
A.D. 2-4; F.D. 3-8; P.D. 1-8; J.D. 1-4, 6-8	12022	1130595	12/18/50	26	4,162.40
Westfield 1, 2	12257	1131332	3/ 6/51	2	80.00
Grand Valley 7, 8	11956				
Gem 1-10		1131391	3/19/51	18	2,080.10
Community 1	12013				

Names and numbers of Claims	Contest Number	Patent Number	Date of Patenting	Number of Claims	Acreage of Claims
Lucky Strike 1, 20	13029	1131392	3/19/51	2(of 8)	246.92
Lucky Strike 23	12844	1131394	3/19/51	1	51.00
Velvet 13, 14	12300	1131843	5/ 1/51	2	74.33
Coral T. 3, 4, 7	13029	1132289	6/14/51	3	157.27
Echo 1, 2, 4,	12725				
Echo 3, 6	12919	1136446	9/16/52	11	1,450.64
Texas 30, 41, 46-49	12922				
[1829]					
F. and C. 1, 2	12971	1139057	5/ 5/53	2	224.75
Midas 8	12154				
Midas 3					
Double B 1, 3	12992				
Bituminite 1	12993	1139294	5/28/53	8(of 9)	936.17
Midas 4	12171				
Bituminite 2	12155				
Pratt 11, 12	12271	1141193	10/ 7/53	2	320.00
Pratt 1, 2, 5, 6	12271	1141578	11/18/53	4	640.00
Clear Creek 2, 4	12275				
Velvet Shale 20	12888	1142205	12/29/53	3	70.43
Adelaide 1-4	11859	1142214	12/30/53	4	583.77
Massive 1-4, 6, 7					
Shale King					
Shale King 1-9					
Debeque					
Debeque 1, 3, 4	12032	1143461	3/23/54	29	4,400.80
Shale Mountain Fraction					
Shale Ranch					
Shale Mountain					
Shale Mountain 1-5, 8					
Davy 1	11855	1143855	4/ 7/54	1	80.84
Davy 3	11855	1143856	4/ 7/54	1	40.00
Boulder 1, 5	12927	1144370	5/ 7/54	2(of 5)	316.76

[1830]

Names and numbers of Claims	Contest Number	Patent Number	Date of Patenting	Number of Claims	Acreage of Claims
G.M. 1-3, 5-16, 21-24 26-30	12198				
G.M. 4	12262	1145915	8/ 5/54	33	4,683.29
G.M. 19, 20, 25, 31-35	12573				
Roosevelt 1-4, 6	12367				
Becky 5, 6	11864	1146469	9/ 3/54	7	915.12
Victor 7, 8	12621				
Victor 3; Woody 3, 4	12371	1146470	9/ 3/54	5	310.00
Grand 3, 4, 7	12367	1146471	9/ 3/54	3	57.50
Little Pete	11861	1146472	9/ 3/54	1	120.00
Ransom 5, 6	12725	1150854	3/17/55	2	319.74
Big Pete 3, 5-7	11855				
Big Pete 4		1151423	4/ 7/55	9	1,400.00
Adelaide 5-8	12354				
Buffalo 1, 2	11855	1151424	4/ 7/55	2	320.00
Lucile 1-7	11855	1151425	4/ 7/55	7	1,120.00
Martin 1	12854	1151426	4/ 7/55	1	160.00
Dere 5-8	11855	1151427	4/ 7/55	4	600.00
Colorado 1-6 (Colorado Group (2 claims))	11855	1151428	4/ 7/55	6	960.00
Dere 2-4	11855	1151429	4/ 7/55	3	360.00

[1831]

Denver 1-8	12069	1151430	4/ 7/55	8	1,202.36
Coscoro 1-4	11746				
Coscoro 5-9, 11	11748				
Ureca 1-16	11745				
War Eagle 5-9	11748				
Marcedus 1-14	11752	1151544	4/13/55	88	13,938.68
Black Eagle 1-6	11755				
Aspin 1-3	11756				
War Eagle 1, 2	11748				
C.F 4 O.S.Co. 1-18, 20, 21, 23-27, 30-36	11749				

Names and numbers of Claims	Contest Number	Patent Number	Date of Patenting	Number of Claims	Acreage of Claims
Black Sulphur Falls 1-17	11753				
Ute 1-12	11754	1151868	4/26/55	29	4,640.00
Buffalo 3, 4	11855	1151870	4/26/55	2	323.79
Dry Land 1, 2	12152	1151915	4/27/55	2	191.60
South Star 1-4 Snow Crest 1-4 North Star 5	12025	1152194	5/10/55	9	1,440.00
Pratt 3, 4, 9, 10	12271	1152512	6/ 7/55	4	640.00
Denver 111, 112	11862	1156994	2/ 2/56	2	320.00
Columbine 1-8	11855	1157155	2/ 9/56	8	1,280.00
Champion 5	12626	1160705	6/19/56	1	36.04
Joe T. 1	13066				
Woodrow Wilson 12	12105	1174074	8/13/57	2	320.00
[1832]					
Roosevelt 8, 11	12367	1174144	8/14/57	2	244.34
January 4 New Year Error	12046	1174146	8/14/57	3	360.00
New Year 3	12046A	1175032	9/13/57	1	80.00
Aspin 5, 6	11756	1175468	10/ 2/57	2	320.82
Yankee 6; Grand 12	12361	1176290	11/ 7/57	2	162.57
Coscoro 10, 12	11748				
Two Gems 1, 2	11744	1176336	11/ 8/57	6	960.00
War Eagle 3, 4	11743				
Virginia 1-5	12370	1176915	11/27/57	5	800.00
Massive	12032	1184014	7/ 1/58	1	160.00
Colorado Figure Four Oil Shale Co. 19, 22, 28, 29	11749	1190477	1/ 9/59	4	640.00
T.N.T. 1	12038	1191551	1/26/59	1	78.37

Names and numbers of Claims	Contest Number	Patent Number	Date of Patenting	Number of Claims	Acreage of Claims
Lucky Strike Red Top Evergreen Black Eagle Winner Blue Bird Big Chief	12024A	1192386	2/10/59	7 (of 9)	1,121.04
[1833]					
Sulphur Springs	12780				
Mount Blaine	12132				
Mary L.	12670				
Mt. Blaine 1, 3	12798	1196641	6/19/59	10 (of 17)	1,340.82
Mount Blaine	13096				
Mount Blaine 1, 4 John A. Herman F. Mary L. Gertrude L. Alva A.					
West Star 1-4 North Star 1-4, 6	12025	1204188	1/26/60	9	1,070.16
G.M. 17, 18	12261	1205139	2/17/60	2	320.00
Bitumen 24	13071	1210613	7/ 6/60	1 (of 14)	50.00
			Totals	507	74,578.06

[1834] II. Oil Shale Claims in Colorado Patented on Applications filed Subsequent to the Virginia-Colorado decision, June 3, 1935

Name of Claim	Patent Number	Date of Patenting	Number of Claims	Acreage of Claims
Golden City 1, 2 Sunny Brook 7, 10, 12	1110478	2/18/41	5	605.23
Golden City 5, 6, 28	1113261	3/ 3/42	3	400.00
Sunny Brook 1-3	1113262	3/ 3/42	3	459.92
Mt. Mamm 12-15	1119490	2/19/45	4	488.61
Golden City 3, 4, 29-31	1122907	10/27/47	5	698.58
Buck Canyon 3, 4, 9, 10	1124594	2/ 3/49	4	640.00
Blue Bird 3	1126338	6/17/49	1	120.00
Big Bell 1, 3, 5-8	1126450	6/29/49	6	960.00

Name of Claim	Patent Number	Date of Patenting	Number of Claims	Acreage of Claims
Triumph 1-12, 15, 16	1126492	6/30/49	14	2,240.00
J.B. 1-4	1127287	9/21/49	4	635.16
Chicago 1-4 Smuggler 1-4	1127293	9/22/49	8	1,278.40
Clear Creek 1-3, 5-8	1127499	10/19/49	7	1,118.40
Triumph 29-44	1128041	1/26/50	16	2,560.00
F.D. 1, 2 C.D. 1-8 C.C.D. 1-8	1128042	1/26/50	18	2,886.00
Coral T. 1, 2, 8, 9, 26-30, 38	1128255	2/ 9/50	10	1,594.04
Sunny Brook 15-37	1128451	3/ 8/50	23	3,681.43
[1835]				
Clear Creek Clear Creek 1	1129498	7/24/50	2	118.47
Coral T. 31-37	1129799	8/29/50	7	1,116.49
Golden City 40-42	1129902	9/ 7/50	3	316.68
Sunny Brook 4-6, 8, 9, 11, 13, 14	1129903	9/ 7/50	8	1,214.33
Lucky Strike 15	1130493	12/ 4/50	1	29.30
Coral T. 39, 40	1130494	12/ 4/50	2	315.78
Last Chance 1-6	1130593	12/18/50	6	960.00
Triumph 21-28	1130594	12/18/50	8	1,271.84
J.D. 1-8 A.D. 1-4 P.D. 1-8 F.D. 3-8	1130595	12/18/50	26	4,162.40
Westfield 1, 2	1131332	3/ 6/51	2	80.00
Gem 1-10 Community 1 Grand Valley 7, 8	1131391	3/19/51	13	2,080.10
Lucky Strike 1-3, 19, 20, 24-26	1131392	3/19/51	8	1,207.22
Lucky Strike 23	1131394	3/19/51	1	51.00
Velvet 13, 14	1131843	5/ 1/51	2	74.33
Coral T. 3, 4, 7	1132289	6/14/51	3	157.27

Name of Claim	Patent Number	Date of Patenting	Number of Claims	Acreage of Claims
[1836]				
French 1-11, 26-31	1132814	8/20/51	17	2,394.51
Sookum 1	1136026	7/31/52	1	161.15
Echo 1-4, 6 Texas 30, 41, 46-49	1136446	9/16/52	11	1,450.64
F. and C. 1, 2	1139057	5/ 5/53	2	224.75
D. & R. G. 1-3	1139281	5/27/53	3	443.36
Midas 3, 4, 7, 8 Double B 1, 3 Bituminite 1-3	1139294	5/28/53	9	1,243.35
Falls 1-3	1139295	5/28/53	3	359.20
Pratt 11, 12	1141193	10/ 7/53	2	320.00
Pratt 1, 2, 5, 6	1141578	11/18/53	4	640.00
Clear Creek 2, 4 Velvet Shale 20	1142205	12/29/53	3	70.43
Adelaide 1-4	1142214	12/30/53	4	583.77
Bituminite 4 J.B. 7, 8	1142448	1/20/54	3	467.87
Massive 1-4, 6, 7 Shale King Shale King 1-9 Debeque Debeque 1, 3, 4 Shale Mountain Fraction Shale Ranch Shale Mountain Shale Mountain 1-5, 8	1143461	3/23/54	29	4,400.80
[1837]				
Davy 1	1143855	4/ 7/54	1	80.84
Davy 3	1143856	4/ 7/54	1	40.00
Boulder 1-3, 5, 6	1144370	5/ 7/54	5	798.78
G.M. 1-16, 19-35	1145945	8/ 5/54	33	4,683.29
Roosevelt 1-4, 6 Becky 5, 6	1146469	9/ 3/54	7	915.12
Victor 3, 7, 8 Woody 3, 4	1146470	9/ 3/54	5	310.00
Grand 3, 4, 7	1146471	9/ 3/54	3	57.50
Little Pete	1146472	9/ 3/54	1	120.00
Ransom 5, 6	1150854	3/17/55	2	319.74
Little Jim 1-3, 5-12	1151207	3/30/55	11	1,762.93
Adelaide 5-8 Big Pete 3-7	1151423	4/ 7/55	9	1,400.00

Name of Claim	Patent Number	Date of Patenting	Number of Claims	Acreage of Claims
Buffalo 1, 2	1151424	4/ 7/55	2	320.00
Lucile 1-7	1152425	4/ 7/55	7	1,120.00
Martin 1	1151426	4/ 7/55	1	160.00
Dere 5-8	1151427	4/ 7/55	4	600.00
Colorado 1-6	1151428	4/ 7/55	6	960.00
Dere 2-4	1151429	4/ 7/55	3	360.00
Denver 1-8	1151430	4/ 7/55	8	1,202.36
[1838]				
Marcedus 1-14 Ureca 1-16 Colorado Figure Four Oil Shale Co. 1-18, 20, 21, 23-27, 30-36 Black Eagle 1-6 Aspin 1-3 Coscoro 1-9, 11 War Eagle 1, 2, 5-9	1151544	4/13/55	88	13,938.68
Ute 1-12 Black Sulphur Falls 1-17	1151868	4/26/55	29	4,640.00
Buffalo 3, 4	1151870	4/26/55	2	323.79
Perfection 1-4, 9-12 Magnetic No. 1	1151914	4/24/55	9	1,360.80
Dry Land 1, 2	1151915	4/27/55	2	191.60
South Star 1-4 Snow Crest 1-4 North Star 5	1152194	5/10/55	9	1,440.00
Pratt 3, 4, 9, 10	1152512	6/ 7/55	4	640.00
Gold Oil 54	1156704	1/18/56	1	39.97
Denver 111, 112	1156994	2/ 2/56	2	320.00
Columbine 1-8	1157155	2/ 9/56	8	1,280.00
Champion 5	1160705	6/19/56	1	36.04
Gordon V.	1160966	6/25/56	1	80.01
Hydrocarbon 39-43, 46-48	1162967	8/ 8/56	8	1,291.41
Bernard R.	1164738	9/12/56	1	157.60

[1839]

Name of Claim	Patent Number	Date of Patenting	Number of Claims	Acreage of Claims
Pilot	1165239	10/ 4/56	1	161.20
Hydrocarbon 57-60, 61A, 62, 64, 66-72, 92, 93, 121	1166325	11/ 9/56	17	2,443.41
G.J. 1-24	1168686	2/ 8/57	24	3,771.69
Joe T. 1 Woodrow Wilson 12	1174074	8/13/57	2	320.00
Roosevelt 8, 11	1174144	8/14/57	2	244.34
Denver 77, 78	1174145	8/14/57	2	219.44
January 4 New Year 4 Error	1174146	8/14/57	3	360.00
Madden 1, 2	1175031	9/13/57	2	320.26
New Year 3	1175032	9/13/57	1	80.00
Grand Valley 1, 2	1175467	10/ 2/57	2	75.42
Aspin 5, 6	1175468	10/ 2/57	2	320.82
Yankee 6 Grand 12	1176290	11/ 7/57	2	162.57
Coscoro 10, 12 Two Gems 1, 2 War Eagle 3, 4	1176336	11/ 8/57	6	960.00
Virginia 1-5	1176915	11/27/57	5	800.00
Pratt 7, 8	1180216	3/13/58	2	320.00

[1840]

Idell 17, 18	1183631	6/26/58	2	192.56
Idell, 1, 2, 7, 20-24	1183632	6/26/58	8	1,178.73
Massive	1184014	7/ 1/58	1	160.00
Colorado Figure Four Oil Shale Co. 19, 22, 28, 29	1190477	1/ 9/59	4	640.00
T.N.T. 1	1191551	1/26/59	1	78.37
Lucky Strike Red Top Evergreen Carlyle Hardison Black Eagle Winner Blue Bird Big Chief	1192386	2/10/59	9	1,384.14

Name of Claim	Patent Number	Date of Patenting	Number of Claims	Acreage of Claims
Big Pete 8, 9	1192960	2/19/59	2	280.00
May Belle 1-4, 7 Ammonia Phenol Coal Tar Potash Tungsten Alum	1195836	5/26/59	11	1,709.88
[1841]				
Charles E. Charles E. (2nd) Alva A. Herman F. Gertrude L. John A. Mary L. Grace L. James H. James H. (2nd) Sulphur Spring Mount Blaine Mount Blaine 1, 3-5 Petroleum	1196641	6/19/59	17	2,359.57
Idell 3-6	1198022	8/ 6/59	4	640.00
West Star 1-4 North Star 1-4, 6	1204188	1/26/60	9	1,070.16
G.M. 17, 18	1205139	2/17/60	2	320.00
General Haig 10, 11	1210612	7/ 6/60	2	307.45
Good Hope 47-52, 62-65, 69 Coral T. 71 Bitumen 24 General Pershing 12	1210613	7/ 6/60	14	1,812.69
Good Hope 1-16, 61, 79-82	1210614	7/ 6/60	21	3,325.70
		Totals	768	113,249.67

* * * *

Clerk's Note: Plaintiff's Exhibits No. 102 - Photocopy of a Page 91 Description of tract; No. 103 - Photocopy of a Page 96 Description of tract; No. 104 - Final Cert. of Mineral Entry 2/25/49 - appear in separate exhibit book.

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[1874]

PLAINTIFF'S EXHIBIT 114

Located 4-1-'18 Feb. 27, 1950.

Oil shale mineral entries Denver 056601 and 056606.

Triump Nos. 22 & 23 = M. E. 056601

F. D. No. 7; J. D. Nos. 1, 2, 3, 5 = M. E. 056606

May 23, 1916:	Lands classified as mineral land valuable as source of petroleum and nitrogen.
Feb. 2, 1918:	Commissioner's order that mineral reservations under the act of July 17, 1914 for lands classified as mineral lands valuable as a source of petroleum and nitrogen should read:
	Excepting and reserving, however, to the United States all oil and gas and oil shale or other rock valuable as a source of petroleum and nitrogen in the lands so patented, and to it, or persons authorized by it, the right to prospect for, mine and remove such deposits from the same upon compliance with the conditions and subject to the provisions and limitations of the act of July 17, 1914 (38 Stat.509).
locations made 4-5-18	
May 10, 1920:	H.E. appln 018825 (now Den.032576) filed, subject to above reservation and addl S.R.HE appln 018827 under stockraising act. E

May 17, 1920	and Jan. 28, 1921, entries allowed, respectively.
May 22, 1923:	Final proof on both entries submitted. Protest against the enlarged entry filed by Standard Shales, claiming superior rights under Triumph Nos. 22 and 23 oil shale placer claims located April 5, 1918; protest by J.D. Freeman, based on F.D.No. 7 and J.D. Nos. 1, 2 and 3 and 5 oil shale claims located April 1, 1918.
September 30, 1927: (52 L.D. 201	Oil shale claims held based on valid discoveries and, if otherwise regular, entitled to patent, and entries 018825 and 018827 held for cancellation entries canceled.
October 14, 1927: ? :	Adverse proceedings against the oil shale claims on charge that assessment work for 1929 had not been done.
4-15-30:	Oil shale withdrawals, E. O. M. dated (balance illegible)
June 4, 1930, and July 31, 1931:	Oil shale claims declared null and void.
June 3, 1931:	appln to reinstate the homestead applns filed but rejected.
Oct. 14, 1931:	Dept held applns to reinstate could be accepted pending outcome of contests against oil shale claims. This applied to various similar cases.
November 20, 1931:	Entries 018825 and 018827 reinstated, and later patented, subject to above quoted reservation as to 018825. Entry 018827 under stockraising act. 018825 (Den. 032576) Pat'd 5-10-32 Pat. 1055090

June 30, 1935: The Dept. (55 I.D.287, 290) in view of U.S. Supreme Court decision (295 U.S.639) overruled Departmental decisions in conflict with the U.S. Supreme Court decision which held that contests could not be based on failure to do assessment work.

[1875]

PLAINTIFF'S EXHIBIT 115

United States Department Of The Interior Bureau Of Land Management Washington 25, D.C. (Seal)

Wilkins. In Reply Refer To: Duckworth "AD:RLW" Denver 056601 056606 SL-22010 22024 Mar 7-1950

Decision

Federal Oil Shale Company : Mineral - oil shale

Mineral Entries Held for Cancellation in Part Homestead Patents

Reference is made to mineral applications Denver 056601-6 filed by Federal Oil Shale Company August 30, 1948, for patent to certain oil shale placer claims in T. 5 S., R. 97 W., 6th P.M., Colorado

* * * *

A review of the two mineral applications discloses that the applications for patents and the application notices contain a provision excluding and excepting that portion of the surface of the oil shale placer mining claims which are embraced in the above conflicting patented homestead entries.

* * * * *

[1876] The mineral entries 056601 and 056606 are held for cancellation to the extent of the conflict with patented

homestead entry 032576, cancellation to be final after 30 days from receipt of notice by the entryman.

The right of appeal is allowed.

Marion Clower
Director

RLWilkinson:jah 3/3/50

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* * * *

[1878]

PLAINTIFF'S EXHIBIT 117

United States Department Of The Interior Bureau Of Land Management Washington 25, D. C. (Seal)

File Copy
Surname

Denver 056601
056606
SL 22010
22024

AD:RLW

Nov 7-1950 Confidential Memorandum

To: Regional Administrator, Region IV, Salt Lake City, Utah From: Director, Bureau of Land Management Subject: Mineral Entries Approved for Patenting

Reference is made to your reports of January 19, 1949 involving applications Denver 056601 and 056606 of the Federal Oil Shale Company for patents to the Triumph No. 3 Group and the Crystal Group of oil shale placer claims in T. 5 S., R. 97 W., 6th P.M., Colorado. Final certificates were issued April 25, 1950.

The reports have been examined and found satisfactory. The mineral entries have been approved for patenting.

(Sgd) William Zimmerman, Jr.
(illegible)
Director

RLWilkinson:gb
10/19/50
Copy to: R.A., Reg. IV

• • • •

[1883]

PLAINTIFF'S EXHIBIT 119

United States Department Of The Interior Bureau Of Land Management Colorado State Office Denver, Colorado

November 28, 1955

(Field Number) Region (Date)

Report

Land district and serial No. C-09291, 09292 Date of examination June 23, 1955 Name Rea L. Eaton Field Examiner E. H. Montgomery Subject Mineral Applications Date September 29, 1954 (Application or proof)

Approved:

J. Elliott Hall
Lands & Mineral Officer

• • • •

[1884] In the letter, 1406942 "N" RLW, dated May 8, 1931, adverse proceedings were directed against the Champion No. 5 Claim charging that the annual assessment work had not been done for the year ending July 1, 1930. Notice of Proceedings of Contest 12626 was sent out May 15, 1931. No answer was received, and on October 3, 1931 the Commissioner, General Land Office declared the location null and void and closed the case.

In a letter dated June 15, 1932, Wade V. Lewis, Mining Engineer, General Land Office, recommended that adverse proceedings for lack of assessment work be directed against the Grand Valley Numbers 1-4, which were located August 6, 1904 by Chris Dere and others and which, while giving no legal description in the location notice, were believed to be in Sec. 6, T. 6 S., R. 96 W., 6th P.M. It is not known whether or not adverse proceedings were directed against the claims.

In any case, the decision declaring the Champion No. 5 null and void and the possible decision against the Grand Valley Numbers 1 and 2 may have been overruled by the Departmental decision on June 24, 1935, 55 LD 287, which held, in view of the U.S. Supreme Court decision of June 3, 1935, Ickes vs. Virginia-Colorado Development Corporation, 295 US 639, that the Department of Interior had no authority to declare a claim void for lack of performance of annual assessment work.

Oil and gas lease, C-09347, was issued December 1, 1954 for the lands embraced by the Champion No. 5 Claim. Lots 19 and 20, Sec. 1, T. 6 S., R. 97 W. have Stockraising Homestead Entries, Patents Numbers 1107-545 and 10911568.

* * * *

[1886] Conclusions and Recommendations:

While the claims have been declared null and void as previously mentioned, it is believed that the decision may have been overruled by the decision in 55 LD 287.

Also it is noted that no proofs of labor were found recorded in the county records.

[1887]

* * * *

Therefore, it is recommended that the applications of the Champion No. 5 and the Grand Valley Numbers 1 and 2 Claims be clear listed and allowed to proceed to patent, if otherwise in order.

Respectfully submitted,

E. H. Montgomery

[1888]

PLAINTIFF'S EXHIBIT 120

United States Department Of The Interior Bureau Of Land Management Colorado State Office 357 New Custom House, Box 1018 Denver, Colorado (Seal)

C-09291 C-09292 December 19, 1955

Memorandum

To. Land Office Manager From: Lands & Minerals Officer Subject: Mineral entries - Colorado 09291 and Colorado 09292 - Rea L. Eaton

Herewith is original and one copy of the approved report of E. H. Montgomery on the above entries.

It is recommended that patent be issued as to these entries which cover the Champion No. 5 and the Grand Valley Nos. 1 and 2 claims providing all other requirements have been met.

J. Elliott Hall
Lands & Minerals Officer

Enclosures

[1889]

PLAINTIFF'S EXHIBIT 121

United States Department Of The Interior Bureau Of Land Management Land Office - 357 New Custom House Denver, Colorado

February 3, 1956 Mr. Rea L. Eaton c/o Mr. John M. Dickson Mile High Center Denver, Colorado Colorado 09291

Dear Sir: Final Certificate in connection with Mineral Entry has been issued this date and forwarded to the Director, Bureau of Land Management, Washington, D. C.

The issuance of Final Certificate is an indication that this office finds satisfactory evidence has been submitted for the issuance of a patent.

Patent will be issued by the Director if all provisions have been complied with.

Sincerely yours,

George H. Woodhall
Land Office Manager

By: Frederick Fishman
Acting Land Office Manager

Clerk's Note: Exhibit No. 122, Final Cert. of Mineral Entry, is in separate Exhibit Book.

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[1891]

PLAINTIFF'S EXHIBIT 123

Office Memorandum - United States Government

To: Mrs. Rose M. Beall Date June 15, 1956 From: W. L. Shafer Subject: Champion No. 5 - Oil Shale Placer Patent Application - Serial No. Colorado 09291

The above-mentioned oil shale placer patent application has been reviewed by this office and it is recommended that you proceed to patent as requested by the Lands and Minerals Officer for Colorado.

W. L. Shafer

Attachment

Clerk's Note: Exhibit No. 124, Final Cert. of Mineral Entry 9/4/56, is in separate Exhibit Book.

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* * * *

[1893]

PLAINTIFF'S EXHIBIT 125

Colorado State Office Denver, Colorado 3 February 12, 1957

C-012327 July 24, 1956
Pacific Oil Company
Mineral Entry
September 30, 1955

Valuation Engineer
.....W. R. Sholes
/s/ J. Elliott Hall
Lands & Minerals Officer

Sixth Principal Meridian, Colorado
T. 6 S., R. 95 W.

Oyler No. 1 Placer — Sec. 10, Lots 1, 4, E ½NE ¼
Oyler No. 2 " — " 11, W ½NW ¼, N ½SW ¼
Oyler No. 3 " — " 11, E ½NW ¼, W ½NE ¼
Oyler No. 4 " — " 11, E ½NW ¼; Sec. 12, W ½NW ¼

Record Data:

An investigation was made as to these claims by the writer in 1927 and 1928. A copy of his report, dated February 28, 1929, is attached.

• • • •

[1894] Amendments:

The locators made amended locations as of October 3, 1916 and January 31, 1918, designating the claims as originally described, but adding information as to the purpose and legal authority.

Oyler No. 4 claim was amended on November 5 1918, to eliminate the northeast quarter of the claim and add in its place a forty acre tract south of and adjacent to the southeast quarter, thus taking in a portion of the rich oil shale cliffs or escarpment. This amendment, at least as to the latter tract, was void because of the intervention of the withdrawal on December 6, 1916, and creation of Naval Oil Shale No. 1 which covered this area. The attached plot shows the locations of the claims as above described (Exhibit A).

The purpose of the above explanation is to show the reasons for the placing of various improvements as described herein, most of which do not lie on the claims for which they were intended.

General Descriptions:

The claims lie on the top of the Book Cliffs plateau at an elevation of about 8700 feet. Though located in an air line less than 10 miles west of Rifle, Colorado, it was necessary to travel more than 45 miles to reach the lands by car because of the inaccessible character of cliffs and mountain slopes bordering the plateau.

The surface is mostly steeply rolling. A ridge separating the drainages of First Anvil Creek and Cottonwood Gulch extends westerly through three of the claims, No. 4 being intersected by a northward flowing branch of Anvil Creek, a tributary of Parachute Creek. The surface of the claims is mostly well sodded, supporting sage brush and grasses with scattering mountain mahogany and service brush, also large groves of aspen, especially on north and east slopes. Erosion has exposed bed rock in many places along the steep hillsides and in places in gulch bottoms.

The above cited report of February 28, 1929 was the result of an intensive survey for the principal purpose of locating and determining the value of assessment work done for the benefit of the claims. The report is attached as Exhibit B.

Geology and Mineral Characteristics:

The principal formation on the surface of the claims is the Upper Member (Evacuation Creek) of the Green River formation, Eocene age. The lower members and the underlying Parachute formation contain rich beds of oil shale, as shown on preliminary map No. 94, O. & G. investigations, U. S. Geological Survey. This was recognized many years ago and in the years 1917 to 1920 there was much activity in the area in the way of mining claim staking speculation. In subsequent years until about 1928 and 1929, several small test retorts were built and much experimental work done by private com-

panies to produce oil and its by-products from the oil shale.

[1895] This culminated in the tests made by the Bureau of Mines at their plants at Rulison and at their present location near the claims. The Bureau of Mines' results were so encouraging that a number of the larger oil companies are now planning experiments toward the commercial development of their oil shale holdings.

When commercial mining develops, it is believed that the rich mahogany zone of the Parachute Creek member, which is cliff forming, will be mined first, followed by other leaner zones as the need develops and the cost of deep mining becomes excessive. Consequently, the areas underlain by the richer deposits are the ones considered most valuable. The oil shale beds lie near horizontal, in this area, dipping slightly to the west. They are fairly uniform in thickness and quality for considerable distances as is shown by the measurements made at numerous points on outcrops and in drill holes.

The rich Parachute Creek member is exposed at various points on the claims. It directly underlies the Evacuation Creek member. A drill hole on Oyler No. 4 Placer, shows the content of oil in the various sections or beds penetrated (Drill Hole C, Sheet 2, Prelim. Map 94, O&G), and shows the combination of the oil shales throughout the area. Outcrops to the east, west and south also show this extension.

The Claims:

Oyler No. 1.

This claim lies mainly in the Evacuation Creek member and is covered with extensive groves of aspen timber. Along a gulch in the northwest quarter of the claim outcrops of good grade oil shale about two feet in thickness were found. These would lie on the claim as described in the patent application and would have been evident at the time the claims were located.

Development work claimed by the applicant consists of six opencuts, none of which are shown to be on the claim. As originally located, one of these, designated by the applicant as No. 1 (No. 13 in the early report, Ex.

B) is within the boundaries near the south line. It is now caved to some extent and difficult to obtain an accurate measurement. In 1927, it displaced about 64.8 cubic yards and was valued at $162.00. Another cut designated in Exhibit B as No. 14 is located about 250 feet south of the original claim boundaries but is in loose earth and sandy, shattered shale. It is not reported by the applicant and was not found in the 1956 examination. Its value was estimated at $44.00.

Five other cuts stated to be on Oyler No. 2 are claimed by the applicant for Oyler No. 1. The 1927-8 investigation showed four cuts only, located in the south central part of Lot 7, Sec. 10, about 1500 feet or more south of the original location of Oyler No. 1 and about 800 feet west of the original location of Oyler No. 2. These holes were dug for the benefit of Oyler No. 1 and were valued at $52.80, $241.51 and $100.00. Total $394.31. Being located more than ¼ mile from the claim, the applicability of the cuts to the claim is questionable. Their value would be as a possible site for extensive mine workings which is negated for two reasons (1) they have deteriorated to a point as to be unusable; (2) they are located on land in the ownership of the United States, withdrawn for the use of the Navy as Naval Oil Shale Reserve No. 1 and permission to use the [1896] Land for that purpose would be questionable. The applicant's designation of certain workings on Oyler Nos. 2 and 3 for the benefit of Oyler No. 1 is erroneous and impractical because the distance from Oyler No. 1 is at least 960 feet and there are intervening gulches which would further isolate the cuts from the claim.

Oyler No. 2:

Outcrops showing 2 feet of good oil shale occur below and to the southwest of an opencut designated as No. 5 in Exhibit B. This is located near the line between the NE ¼ SE ¼ and the NW ¼ SE ¼ on the north side of Cottonwood Gulch. Other outcrops also exist on the claim.

Applicant claims 3 opencuts for the benefit of this claim, only one of which is on the claim. He shows these

cuts to be located high on the ridges along the east-west center line of Sec. 11. No opencuts were found at the points designatedneither in the 1956nor in 1927-8.

However, in 1927 and 1928, 3 opencuts were found along the north side of Cottonwood Gulch in the NW ¼ SW ¼ Sec. 11, and an additional one was found near them in 1956. Other cuts were found along the point of a spur ridge in the same subdivision along the west line of the claim, all of which were constructed for the benefit of Oyler No. 2. All of these cuts are described in the report. Exhibit B, except the one found in 1956. This last one, designated as "G," is approximately 18 feet wide by 17 feet long to an 8½ foot face, wedge-shaped and caved. It displaces about 48 cubic yards and is reasonably worth $120.00. The remainder, Nos. 2, 8, 15, 21, 22, 23 and 25 to 29, inclusive, are all small holes having a total value of $81.90. They are now totally destroyed. Cuts Nos. 5, 5A and 5B, the three first mentioned in this paragraph, were valued at $64.20, $100.00 and $100.00 respectively. Totals for this claim are $466.10.

Oyler No. 3:

Applicant claims 3 opencuts on this claim in the SE ¼ NW ¼, Sec. 11. No holes were found at this point, but a group numbered 1, 1A, 3, 4, 6 and 7 were found within the boundaries of the original locations about 700 or more feet southeast in the NE ¼ SW ¼ of the section. The 1928 estimate of the value of these holes placed them at $860.00. (Exhibit B).

Another cut, improvement No. 9, appears to have been entirely destroyed by erosion. It could not be found.

A 3 foot bed of oil shale outcrops between holes 6 and 7 for a distance of 12 or more feet. It is fairly rich, containing an estimated 25 gallons or more oil per ton. Substantial outcrops were also noted in a gulch in the north part of Oyler No. 3.

Oyler No. 4:

This claim is the easternmost of the group and its southeast corner, as originally located, is near the escarp-

ment or cliff of the rich mahogany oil shales. A tributary to the East Fork of Parachute Creek flows northerly through the claim, originating in a spring located near the ¼ Section Corner between Secs. 11 and 12. In the canyon [1897] occupied by this stream are a number of outcrops of medium to rich shale, one of which occurs on the rounded hillside near the hole designated No. 1-4 by the applicant and No. 10, Exhibit B. This outcrop is 3 to 4 feet thick and of medium to low grade shale. It was observed in 1927 and 1928 and was no doubt in evidence in 1919 and 1920.

Applicant claims 3 opencuts as development work; one on Oyler No. 4 and two on Oyler No. 3. The one on Oyler No. 4 numbered 1-4 by the applicant was identified as No. 10 (Shown in Exhibit B). It was somewhat caved and partly filled with erosional materials but a check of its size indicated little change since measured in 1927. At that time it was valued at $89.00. No workings were found at the points on Oyler No. 3 where claimed by the applicant, but a group of opencuts is located about 700 feet to the southeast. None of the opencuts at this point have any value toward the development of Oyler No. 4 claim because (1) they are located at least 2,000 feet west of the claim; (2) the small sections of beds they expose could not be correlated with the formations on the claim; and (3) they could not be practically used as possible sites for mining operations in connection with the deposits on Oyler No. 4.

The 1927-28 investigation disclosed that four opencuts at the top of the escarpment near the line between the NW ¼ SW ¼ and the SW ¼ SW ¼, Sec. 12, just east of the east side line of the patented Sheridan Placer No. 20, has been dug for this claim. This area is included in the attempted amendment dated Nov. 15, 1918, void because of the intervention of the Naval Oil Shale withdrawal of December 6, 1916, for Reserve No. 1. The claimants evidently believed for several years at least,that the amendment was valid. Present claimants have not mentioned these improvements and have attempted to reinstate the claim to its status prior to Nov. 15, 1918 by filing a new amendment, dated September 13, 1955 by

which the boundaries as originally described, are again claimed.

The four opencuts last mentioned above are numbered in Exhibit B, Nos. 17, 18, 18A, 19 and 20, and given a total value of $591.10.

Other Improvements

Applicants advise that a road and trail, now in use by the Bureau of Mines for access to their experimental mine was built for the common benefit of the four claims. However, since it lies southeast of the claims and no part of it reaches the claims, it is not claimed as a patent expenditure.

This road and trail was measured and evaluated in 1928, prior to occupancy by the Bureau of Mines. At that time the road along a ridge measured 0.9 mile and the trail to the escarpment 2.4 miles long. The value was estimated to total $2,401.75 and was mentioned as being very high to cover any possible adversity due to high wages, severe weather conditions, etc. That this estimate was too high is shown by the applicant who states its computed value from records, is $1200.

[1898] If this road had been completed to the claims, its value toward development would have been unquestioned. Its practicability, however, to reach the claims, is nil. This was proven by the action of the Bureau of Mines, who used it to reach the point near the base of the cliff or escarpment where they established their mine, but found it more economical and feasible to reach the plateau just above by a long 45 mile route around the cliffs.

Duscussion.

As above described, there are natural exposures of oil shale on each of the four claims and it is evident that these exposures were, or could have been, observed prior to February 25, 1920, the date of the Leasing Act. These exposures occur within the boundaries of the claims as probably originally located and within the present boundaries as applied for.

Improvements actually benefiting the claims, as above described, are limited as follows:

Claim	Improvement	Value
Oyler No. 1	1 opencut	$ 162.00
Oyler No. 2	15 opencuts	466.10
Oyler No. 3	6 opencuts	860.00
Oyler No. 4	1 opencut	89.00
	Total	$1,577.10

The location of the claims is doubtful. Regardless of the description contained in the location certificates, the boundaries as staked on the ground would fix the areas for which patent would issue. As heretofore explained, it is probable that they were originally staked so as to adjoin the Sheridan Placers (Mineral Survey 19942) on the north, as indicated on the plat, Exhibit A. The location of the opencuts later dug, as well as the conformity of the boundaries to those of the Sheridans bears out this theory. Also, one of the locators of the Sheridan Placers was also a locator of the Oylers and the latter claims were located almost immediately following the location of the Sheridans. Careful search was made in 1927 and 1928 for the corner posts as described in the Oyler location certificates, but in the eleven year period following location they were evidently destroyed by weathering and erosion, aided by livestock and wildlife, as none identifiable were found.

Recommendations:

It is recommended that the applicant, the Pacific Oil Company, be called upon to furnish proof that the description of the claims as shown in the application for patent represents the location of the claims as originally staked on the ground.

[1899] If satisfactory proof is furnished, it is recommended that adverse charges be brought against the validity of Oyler Nos. 1, 2, and 4 placer mining claims, and that a complaint be issued, charging:

That improvements having a value of $500 worth of labor have not been made on or for the benefit of the Oyler Nos. 1, 2 and 4 placer mining claims.

(Signed) W. R. Sholes
Valuation Engineer

cc: U.S.G.S., Washington, D. C.
Sholes/mb

[1900]

PLAINTIFF'S EXHIBIT 126

Colorado State Office 339 New Custom House P. O. Box 1018 Denver 1, Colorado

Memorandum Nov 20 1957 WRS J

To Director - 5.04g From: State Supervisor, Colorado Subject: Denver Contest 12039 In Archives at Alexandria

You are requested to obtain and forward to us the complete file for Contest, Denver 12039, which involved the Oyler Placer Mining Claims Nos. 1 to 4, inclusive. It is believed this contest file is in the archives at Alexandria.

It is found that a review of this file will be of great assistance in the adjudication of the current application for patent for these claims, (Colorado 012327).

Lowell M. Puckett
State Supervisor

In dupl.

cc: Land Office L&M case file: C-012327 L&M reading SO reading

WRShoes/mb

[1901]

PLAINTIFF'S EXHIBIT 127

United States Department of the Interior Bureau of Land Management Colorado State Office 339 New Custom House P. O. Box 1018 Denver 1, Colorado (Seal)

In reply refer to: 5.22a-2 Denver Contest 12039 AV

Memorandum Jan 27 1958 To: Director - 5.04g From: State Supervisor, Colorado Subject: Denver Contest 12039 Return to Archives 51A27 3-A-109 Box 546023 546023

This office has reviewed the attached file. It may be returned to the Archives at Alexandria, as it has served its purpose.

J. Elliott Hall
Acting State Supervisor

Enclosure: Contest File 12039
In dupl.
cc: Area Admr - 5.20c-2

[1902]

PLAINTIFF'S EXHIBIT 128

5.22a-2 C-010319 Colorado State Office 339 New Custom House P. O. Box 1018 Denver 1, Colorado

Memorandum November 20, 1958 To: State Lands and Minerals Officer From: W. R. Sholes, Valuation Engineer Subject: Appn. for Min. Patent Colo. 010319 Weber Oil Co. - C. F. 4 0.S. Co. Nos. 19, 22, 28, 29 Oil Shale Placer Mining Claims

A review of the early files covering the subject claims discloses the following information:

File 40457 obtained from the Federal Center Archives, Denver, Colorado, contains a report by former Inspector O. J. Berry, dated July 16, 1927, detailing the results of his investigation of the subject claims and many others then under the control of one R. B. Denton. In this report he states, page 1, referring to 249 claims:

* * * *

Former inspector,Clarence C. Bradshaw, now in the Solicitor's office, investigated these locations and obtained affidavits from locators. He failed to obtain sufficient information to justify charges based on bad faith, dummies, etc.

[1903] The files show no evidence of abandonment. On the contrary some measure of assessment work or other control of the claims was evidenced at least to the year 1930.

Contest #11749 was instituted by adverse proceedings against CF 4 Nos. 1 to 36 on Dec. 17, 1927. The sole charge was lack of sufficient assessment work which was declared insufficient by the Supreme Court on June 3, 1935. Ickes v. the Virginia-Colorado Development Corp. (295 U.S. 639), consequently that action was of no avail and did not affect the status of the claims, though they were declared null and void by decision of the General Land Office.

In view of the above considerations, it is recommended that suspension of action awaiting review of the old files be abated and that normal procedure toward adjudication of the application be resumed.

(Signed) W. R. Sholes
Valuation Engineer (Mining)

Land Office
(initials illegible)

[1904]

PLAINTIFF'S EXHIBIT 129

United States Department of the Interior Bureau of Land Management Colorado State Office 339 New Custom House P. O. Box 1013 Denver 1, Colorado (Seal)

Memorandum November 20, 1958 To: State Land Office Manager From: State Lands and Minerals Officer Subject: Application for Min. Patent Colo. 010319 Weber Oil Co. - C.F. 4 O.S. Co. Nos. 19, 22, 28, 29 Oil Shale Placer Mining Claims

Herewith is copy of Valuation Engineer Sholes' memorandum relating to his review of the old files relative to these claims.

You are requested to resume adjudication of the case in accordance with his recommendation.

For the State Supervisor

J. Elliott Hall
Lands and Minerals Officer

Enclosures

L.O. Mgr.
Status
Accounts
Misc.
Olson Adjuc.
Info.
For Action
No Action
For filing

Remarks

[1905]

PLAINTIFF'S EXHIBIT 130

United States Department of the Interior Bureau of Land Management Colorado State Office 339 New Custom House P. O. Box 1018 Denver 1,Colorado (Seal) December 30, 1958

In Reply Refer To: 5.22b C-010319

Memorandum To: Director, 5.04a From: State Supervisor, Colorado Subject: Mineral Application C-010-319, C.F. 4 O.S. Co. Nos. 19, 22, 28, 29, oil shale placer mining claims.

The attached mineral application is forwarded for consideration and issuance of patent, if in order.

With reference to the third paragraph of your memorandum dated May 20, 1957, relative to the applicant waiving his rights to the surface of the stock raising homestead entry please refer to Paragraph 15, Page 5 of

the patent application wherein applicant states that he makes no claim to the surface rights of the land whereon the claims are located.

Oil and gas lease C-09487 which conflicted with the Mineral Entry has been relinquished by the oil and gas lessee. There are no other conflicts.

For the State Supervisor

Louis F. Fox
Acting Land Office Manager

Attachment
In duplicate (Received stamp)

Clerk's Note: Plaintiff's Exhibit No. 131, being Final Cert. of Mineral Entry 11/5/56 appears in a separate exhibit book.

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* * * *

[1907]

PLAINTIFF'S EXHIBIT 132

United States Department of the Interior Bureau of Land Management Colorado State Office 339 New Custom House P. O. Box Denver 1, Colorado

5.22a-2 C-012818 Seal (Received stamp)

Memorandum July 16, 1958 To: Land Office Manager From: Acting Lands and Minerals Officer Subject: C-012818, Robert A. Dick Hardison, et al Oil Shale Placers 12/30/58

A review of the files relative to the Hardison, Lucky Strike, Red Top, Evergreen, Carlyle, Black Eagle, Winner, Blue Bird, and Big Chief Placer Claims indicates that investigations made in 1929 and earlier resulted in Contests 12024 and 12024A. Commissioner's letter (GLO) "N" of Nov. 23, 1931 held the claims null and void except the Hardison and Carlyle. The contests were

based on lack of sufficient assessment work. No question was raised as to the validity of the claims based on legal requirements other than assessment work.

Any suspension of action pending the investigation herein should be terminated, and it is so recommended.

For the State Supervisor

Andrew J. Senti
Acting Lands and Minerals Officer

In dupl.
L. O. Mgr.
Status
Accounts
Misc.
Olson Adjuc.
Info.
For Action
No Action
For filing

Remarks

[1908]

PLAINTIFF'S EXHIBIT 133

Office Memorandum—United States Government

To: Chief, Patents Section Date: Feb 5—1959 From: Minerals Officer (Mining) Subject: Oil Shale Placer Patent Application Colorado 012818

* * * *

Conflicting oil shale placer claims have been noted and a schedule is attached. Each was declared null and void for failure to perform assessment work and not for any other reason. The reason for declaring these claims null and void in no way detracts from the validity of the subject claims.

* * * *

The application may now proceed to patent.

W. L. Shafer
Minerals Officer (Mining)

Attachment

[1909]

PLAINTIFF'S EXHIBIT 134

* * * *

Mineral Report

Mineral Patent Application of Barney L. Whatley for the G. M. Nos. 17 & 18 Placer Mining Claims (Title)

* * * *

By Frank W. Kuehnel
Valuation Engineer (Mining)
Approved

J. Elliott Hall
Lands and Minerals Officer
31748

"For Administrative Use Only"

[1910]

* * * *

On March 30, 1930, following an adverse report by Mining Engineer Warren R. Sholes, adverse proceedings against the claim on the charge of non-performance of assessment work was initiated. The claims were canceled by letter of July 28, 1930 for failure of the contestees to respond within the time limit allowed.

* * * *

[1911] General: Subject claims are located on the south slope of the stream valley of Kimball Creek, approximately 25 miles northwest of DeBeque, Colorado. The topography is similar to other oil shale land in the vicinity, consisting principally of plateau land dissected by deep gulches. Cliffs border the plateau land and form an almost inaccessible escarpment along the hills.

A heavy cover of "buck brush" or mountain mahogany covers subject claims with small non-commercial groves of spruce at the higher elevations and pinon and juniper along the lower portions of the claims adjacent to Kimball Creek.

Although several water courses intersect the claims along north-south gulches, the water courses are intermittent and are flowing only in early spring. The only perennial stream in the area is the east-west flowing Kimball Creek which is located to the north of G.M. 17 and G. M. 18. The claims were originally located in accordance to the land survey of Feb. 9, 1885. A resurvey of the lands by the independent Government, approved October 29, 1927, placed the position of the G.M. 17 and G.M. 18 at variable distances from the original position.

No old corners were located during the examination of May 15, 1958, but the present claims were found to conform to the location of the second survey.

The same problem arose during the examination of G.M. Nos. 1 - 16, (Whatley Application C-05019 and Mineral Patent 11445945) and was resolved by the applicant's conformance to the subdivision of the resurvey.

Geology: In the DeBeque oil shale area the oil shale occurs in the Green River Formation of Eocene Age, which is a division of the Tertiary Period. The formation dips at a low angle towards the center of the Piceance Creek Basin and is made up of interbedded sandstone, shales, and other Kerogen bearing rocks. The individual oil shale beds occur as several distinct types: brown or black massive hales, with conchoidal fracture: thin bedded paper shales, and irregularly laminated and/or contorted shale beds. The latter variety was found in outcrops on subject claims. Correlation of these beds from one measured section to another is difficult, as a large variation in both thickness and oil content occurs. The outcrops on the subject claims appear to be in the lower shale member of the Green River, which generally contain some beds rich in Kerogen. The Kerogen containing material on these claims appears to be in a marlstone rather than a true shale.

* * * *

[1913]

* * * I hereby recommend that a patent be issued to Barney L. Whatley under Mineral Application C-020379.

* * * *

[1914]

PLAINTIFF'S EXHIBIT 135

Minerals Work Sheet

M. E. C020379: Land District Colorado References are to 43 CFR Name of claim G, M. 17 G. M. 18 Kind of deposit Oil Shale 185.54-71-73

* * * *

Contest 12261 involved failure to do assessment work and is immaterial.

O)&G lease C013107 cancelled by decision June 23, 1959 no appeal and lessee has made application for repayment. of rental.

C. Le Roy Olson Examiner
February 27, 1958, 19

[1915]

PLAINTIFF'S EXHIBIT 136

United States Department of the Interior Bureau of Land Management Colorado State Office 339, New Custom House P. O. Box 1018 Denver 1, Colorado

(Seal) In reply refer to 5.22b C-020379 M. E.

December 21, 1959 Memorandum To: Director From: State Supervisor, Colorado Subject: Colorado 020379

Attached is application for patent to G. M. # 17 and G. M. # 18, oil shale placer mining claims filed by Barney L. Whatley, for consideration in issuance of patent if in order.

Oil and gas lease Colorado 013107 was canceled by decision dated June 23, 1959. The period in which to appeal that decision has expired, and no appeal has been received. There are no other conflicts.

Charges were brought against the subject claims in contest proceeding No. (illegible) for failure to do assessment work. By letter number 1290989 "N" CRV, dated July 19, 1935, the Denver Land Office was instructed to close all cases involving adverse proceedings against mineral locations or entries where the charge was failure to do assessment work. Therefore, contest 12261 is not considered as a bar to issuance of patent in the subject case.

For the State Supervisor,

Dale R. Andrus
Land Office Manager

Enclosure (Received stamp)

* * * *

[1916]

PLAINTIFF'S EXHIBIT 136-A

Address only the Commissioner of the General Land Office

United States Department of the Interior General Land Office Washington

Jul 17 1935 In reply please refer to Denver 042108 "N" CRB Information.

Mr. Edward Oltenbern, De Beque, Colorado.

My dear Sir: Replying to your letter of June 25, 1935, addressed to the Register of the United States land office, Denver, Colorado, and referred here for reply, you are advised that on June 3, 1935, the Supreme Court of the United States held in the case of Ickes, Secretary of the Interior, vs. Virginia-Colorado Development Corporation that the oil shale claimant lost no rights by failure to do the annual assessment work on its claims, that such failure gave the Government no right to declare the claims null and void, and that the proceedings brought by the Government against the claims, based solely on that ground, went beyond the authority conferred by law and did not affect the validity of the claims.

[1917] In view of that decision the Department, on June 24, 1935, in the case of the Shale Oil Company, Denver mineral application 042552, recalled and vacated its decision in the Virginia-Colorado Development Corporation case and overruled all its previous decisions in conflict with the decision of the Supreme Court.

You are, therefore, advised that so far as the jurisdiction of this office is concerned, any declaration by it that an oil shale placer claim is null and void based solely on a charge that the claimant failed to perform annual assessment work or resume work on the claim is void and does not affect the right of the owner of the claim to maintain his possession thereof under the mining laws.

* * * *

[1918] Very respectfully,

Fred W. Johnson
Commissioner

7-16 edt

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* * * *

[1921]

PLAINTIFF'S EXHIBIT 138

United States Department of the Interior Bureau of Land Management Colorado State Office Denver, Colorado

November 21, 1955

(Field number) (Region) (Date)

Report

Land district and serial No. C-010007 Date of examination June 22, 1955

Name A. H. Powell Field examiner E. H. Montgomery

Subject Mineral Application Approved:

Date January 10, 1955 (Application or proof) J. Elliott Hall Lands and Minerals Officer

* * * *

[1924] This claim was declared null and void by the Commissioner of the General Land Office. On May 9, 1929 a report, (F.D. 44929) by Mining Engineer A. C. Kinsley, was furnished the General Land Office. The the letter, 1339694 "N" UEG, dated May 31, 1929, from the Commissioner, adverse proceedings were directed against the Massive Claim, among others, for lack of assessment work. On June 26, 1929 a Notice of Proceedings of Contest No. 12032 was sent the owners of the claims (John D. and Reese Carlisle and Grant Bales). On July 15, 1929 an answer was filed by the defendants admitting that assessment work was not performed for the years ending July 1, 1927 and July 1, 1928, and giving as reason that the land was classified as coal land. A Motion for Judgment by Confession by the District Law Officer, General Land Office, was filed before the Commissioner, dated July 29, 1929. An answer by the defendants was also filed before the Commissioner claiming right to resume labor depending on the Decision of the U.S. Supreme Court in the famous Emil L. Krushnic Oil Shale Case (A-10053, Glenwood Springs 022364). After the Krushnic decision of January 6, 1930 (280 U.S. 306) the charges were amended by the letter of May 13, 1930 to the one charge that the assessment work was not performed on the Massive Claim, among others, for the years ending July 1, 1927, and July 1, 1928 and that work has not since been resumed, the Notice of Proceedings being sent on May 26, 1930. The defendants failed to answer the charges and in the letter of August 16, 1930 the Commissioner declared the claims, including the Massive, null and void and closed the case.

This decision was overruled by the Departmental Decision on June 24, 1935, 55 L.D. 287, which held in view of the U.S. Supreme Court Decision of June 3, 1935, Ickes v. Virginia - Colorado Development Corp., 295 US 639, that the Department of Interior had no authority to declare a claim void for lack of performance of annual assessment work.

* * * *

The land is embraced in O & G Lease C-03971, issued February 1, 1955.

* * * *

[1926] Conclusions and Recommendations: While the claim has been declared null and void as previously mentioned, it is believed that the decision in 55 L.D. 287 overruled this decision.

* * * *

Clerk's Note: Plaintiff's Exhibits No. 139 - Mineral Work Sheet 11/25/57; No. 140 - Final Cert. of Mineral Entry - appear in separate exhibit book.

[1931]

PLAINTIFF'S EXHIBIT 141

Office Memorandum - United States Government 5.04a

To: Chief, Patent Section From: Mineral Officer, Mining Subject: Oil shale patent application Colorado 010007, Alfred Heber Powell Date: Jun 26, 1958

The subject case has been reviewed for issuance of patent regarding any previous charges which would nullify the Massive mining claim, subject of the application for patent.

* * * *

The claim was declared null and void for failure to do assessment work only, on May 26, 1930. This decision was overruled by departmental decision on June 24, 1935, Ickes vs. Virginia-Colorado Development Corporation, 55 L. D. 287.

Therefore, the subject case may proceed to patent.

Minerals Officer, Mining
W. L. Shafer

10007 116

[1932]

PLAINTIFF'S EXHIBIT 142

Form 4-802 (February 1958) Serial Number C-016671

United States Department of the Interior Bureau of Land Management Area 3

Mineral Report

* * * *

November 7, 1958
(Date) of Report

By Frank W. Kuehnel
Valuation Engineer (Mining)

cc: Director
U.S.G.S.
Washington, D.C.

Approved

J. Elliott Hall
Lands and Minerals Officer
GPO 853247

[1933]

* * * *

Recommendations: In compliance with the Director's memorandum of November 22, 1957, and in the best interest of the Government, it is recommended that:

a. Patent proceed immediately on Liberty Bell Nos. 2 to 12, inclusive, Placer Mining Claims; all else being regular.

* * * *

[1934] Adverse proceedings were directed against the subject claims by office letter "N" of June 30, 1930, on the charge "That annual assessment work to the value of $100 was not performed upon each or any of the Liberty Bell Nos. 1-12, inclusive, oil shale placers for the year ending July 1, 1929, and that work has not since been resumed." The charge was not contested and the claims were declared null and void to the extent of 4 of the 8 claimants of record of July 31, 1931, by Commis-

sioner's letter 123037 "N" VEG, dated July 21, 1931 (Contest 11758). The claims were reactivated by Tell Ertl of Grand Valley, Colorado, and Henry L. Price, Silmon Smith and Charles Holmes, both of Grand Junction, Colorado, under Application C-016671.

• • • •

[1943]

PLAINTIFF'S EXHIBIT 144

September 9, 1957

Memorandum To: Area Administrator, Area 3 From: Director, Bureau of Land Management Subject: Sufficiency of Discovery for Oil Shale Placer Claims

Reference is made to your memorandum of February 27, 1957, in which you request clarification, in light of Freeman v. Summers (52 L.D. 201) and Standard Shales Products Company v. Summers, United States, Intervenor (on rehearing), of the sufficiency of discovery on the 27 mining claims listed under Item 3, page 4 of Valuation Engineers Sholes, Montgomery, and Dow memorandum of October 26, 1956, to the Colorado Land and Minerals Officer.

• • • •

The Department concluded on May 10, 1920 (47 L.D. 543) that oil shale is a valuable mineral subject to location and entry under the mining law. These "instructions" have never been overruled or vacated and they bind the Bureau until they have been.

As stated in Freeman v. Summers: "The evidence in this case shows that in this particular area of Colorado, the lands contain the Green River formation, and that this formation carries oil shales in large and valuable quantities, that while the beds vary in the richness of their content, the formation is one upon which the miner may rely as carrying oil shale which, while yielding at places comparatively small quantities of oil, in other places yields larger and richer quantities of this valuable mineral.

• • • •

[1944] In summary, the question of sufficiency of discovery for oil shale placer claims in any area occupied by the Green River formation has been resolved where the conditions are comparable to those found in the lands involved in Freeman v. Summers, supra.

Acting Director

* * * *

[1952]

PLAINTIFFS EXHIBIT 149

(Seal) In reply refer to: 5.22b C-08055 M.E.

United States Department of the Interior Bureau of Land Management Colorado State Office 339, New Custom House P. O. Box 1018 Denver 1, Colorado

November 24, 1959 Memorandum To: Director - 5.04a From: State Supervisor, Colorado Subject: Case File C-08055, Mineral Patent Application, Silmon Smith

Attached application for patent is forwarded for consideration and issuance of patent, if in order.

The lands covered by the application are embraced in oil and gas lease offer C-021229 which has been suspended. The offer to lease will be rejected upon issuance of patent. There are no other conflicts.

The mineral report of the Lands and Minerals Division clear-listing the claims for patent is in the file.

For the State Supervisor

Dale R. Andrus
Land Office Manager

Attachment (Received stamp)

[handwritten notice] Case file 1337597, Contest 12025, has been reviewed for charges regarding assessment work.

All appears in order and patent may issue.

Robert F. May
Minerals Staff Office
12/15/59

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* * * *

[1956]

PLAINTIFF'S EXHIBIT 151

Address only the Commissioner of the General Land (illegible)

United States Department of the Interior General Land Office Washington

In reply please refer to 1337597 "N" UEG Sep 15 1931

United States vs. A. E. Templeman, et al. :R. Contest 12025. :Locations null and void. :Oil shale.

Register, Denver, Colorado.

Sir: By office letter "N" of May 16, 1931, the North Star Nos. 1, 2, 3, 4,embracing, respectively, the NW ¼, SE ¼, SW ¼, NE ¼ Sec. 2, North Star No. 5, NW ¼ Sec. 12, North Star No. 6, SW ¼ Sec. 1, West Star Nos. 1, 2, 3, 4, embracing, respectively, the E ½ E ½, W ½ E ½, E ½ W ½ W ½ W ½ Sec. 2, South Star Nos. 1, 2, 3, 4, embracing, respectively, the E ½ E ½, W ½ E ½, E ½ W ½, W ½ W ½ Sec. 10, Snow Crest Nos. 1, 2, 3, 4, embracing, respectively, the E ½ E ½, W ½ E ½, E ½ W ½, W ½ W ½ Sec. 11, T. 6 S., R. 100 W., 6th P. M., oil shale placers were held to be null and void, subject to the right of appeal within thirty days from notice to the Secretary of the Interior.

Your report in this case by letter of August [1957] 12, 1931, shows service was had on the three claimants of record June 15 and 17, 1931, and you report that no response has been made.

The North Star Nos. 1 to 6, inclusive, West Star Nos. 1 to 4, inclusive, South Star Nos. 1 to 4, inclusive and

Snow Crest Nos. 1 to 4, inclusive, oil shale placers are declared null and void and the United States has taken possession of the lands within the claims for its own uses and purposes. The case is closed.

Advise the parties by ordinary mail.

Very respectfully

(Sgd) C. C. Moore
Commissioner.

9-14-mes

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* * * *

[1960]

PLAINTIFF'S EXHIBIT 154

Memorandum May 19 1960 To: Associate Director From: Minerals Staff Officer Subject: Comments on Thesis of George R. Schmidt

* * * *

4. A few criticisms of the thesis are as follows:

(a) Page 2. Patent applications are not adjudicated by the minerals staff officer. Oil shale patent applications are checked, not because of any special know-how, but because of access in Washington to a unique set of plats with extensive oil shale information.

* * * *

[1961]

Max Caplan
Minerals Staff Officer

* * * *

[1962]

PLAINTIFF'S EXHIBIT 154-A

5.04a (name illegible) Caplan 2/15/62 (name illegible)

Memorandum Feb 23 1960 To: Solicitor From: Director, Bureau of Land Management Subject: Recommendation to consider initiation of a suit to cancel patent

Attached are patent case files Nos. 1143461 (C-04975) and 1184014 (C-010007) which contain the record of patent proceedings in which patents were issued to Alfred Heber Powell, embracing a total of 30 oil shale placer claims.

• • • •

[1963] The claims were subsequently contested and declared null and void for non-performance of assessment work. This declaration of invalidity had no effect and did not proscribe subsequent issuance of patent.

• • • •

Edward (name illegible)
Director

Attachment

• • • •

[1972]

PLAINTIFF'S EXHIBIT 156

United States Department of the Interior Office of the Solicitor Denver Regional Office Room 21, Building 53 Denver Federal Center Denver 25, Colorado

Bureau of Land Management 1 State Supervisor (initials illegible) 3 Land Office 2 Lands & Minerals (initials illegible) Range & Forestry Administration For Action . . . . For Filing . . . . (illegible)

(handwriting illegible)

Memorandum Dec 11 1959 To: State Supervisor, Bureau of Land Management, Denver, Colorado From: Regional Solicitor Subject: Contest No. 147 (Colo.)—Hoffman Nos. 11, 12, 13 and 14 placer mining claims—John W. Savage

You will recall that at the time of the prehearing conference of the subject case that consideration was given to the filing of an amended complaint charging that the claims were null and void pursuant to decisions of the Commissioner of the General Land Office which

were rendered prior to the *Ickes* v. *Development Corporation* decision and which were not appealed.

We have been advised by the Associate Solicitor, Public Lands, that it is the position of the Department that the decisions of the Commissioner of the General Land Office involved herein were void and of no effect in this connection, were subsequently withdrawn and, as a result, the plea of previous judgment or res judicata is not to be applied in these or similar cases.

Bryan L. Kepford
For the Regional Solicitor
Denver Region

	To	Init'l.	Date
Copy to: Area Administrator, Area 3, BLM, Denver, Colorado	1	Manager Mgr. Sec'y.	12/22
	2	Minerals	Olson
		Lands	
		Expediter	
		Info. Ofcr.	
		Accounts	
		Docket	

[1973]

PLAINTIFF'S EXHIBIT 157

Copy DMR Jul 6 1961 Memorandum To: Associate Solicitor, Division of Public Lands From: Regional Solicitor Subject: Oil shale locations declared null and void solely for failure to perform assessment work—Your memorandum of December 3, 1959 (Your reference I-59-2080.10a)

The above-noted memorandum concludes that contests against oil shale placer claims which are based solely upon failure to perform assessment work which resulted in a declaration that the claims were null and void by Department of the Interior decisions which were not appealed are not to be considered as res judicata. The conclusion of the memorandum was based upon the hold-

ing in Ickes v. Virginia-Colorado Development Corp., 295 U.S. 639 (1935), and certain statements to the effect that the decisions of the Department in this regard are void in Shale Oil Company, 55 I.D. 287 (1935). It was reasoned that the Shale Oil Company case had thus effectively nullified all Departmental decisions declaring oil shale placer claims null and void for this reason. The memorandum held that since the doctrine of res judicata does not apply to decisions which are void, it should not be applied to these oil shale contests.

* * * *

[1982] We recognize that it has been the custom of the Bureau of Land Management to ignore the effect of these decisions in adjudicating oil shale patent applications.

* * * *

[1983] Bryan L. Kepford
For the Regional Solicitor
Denver Region

Enclosure

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* * * *

[2011]

PLAINTIFF'S EXHIBIT 175

Address only the Commissioner of the General Land Office Enc. United States Department of the Interior General Land Office Washington Jul 17 1935 In reply please refer to 1609571 "N" CRB Information.

Hon. Edward T. Taylor, House of Representatives.

My dear Mr. Taylor: I have received your letter of July 12, 1935, with enclosed letter to you from Mr. Harry Flynn of Silt, Colorado, relative to the status of oil shale placers heretofore declared to be null and void because of failure to perform the annual assessment work or to resume work before a challenge against the validity of the claims was made by the Government.

The Supreme Court of the United States on June 3, 1935, held in the case of Ickes vs. Virginia-Colorado Development Corporation that the oil shale placer claimant, appellee therein, lost no rights by failure to do annual assessment work on its claims, that such failure gave the Government no right to declare the claims null and void, [2012] and that the proceedings brought by the Government against the claims on the sole ground of failure to perform such work went beyond the authority conferred by law and did not affect the validity of the claims. Under date of June 24, 1935, the Department, in the case of the Shale Oil Company, Denver mineral application 042552, recalled and vacated its decision in the Virginia-Colorado Development Corporation case and overruled its previous decisions in conflict with the decision of the Supreme Court.

The Supreme Court having held that there is no authority of law for a proceeding by the Government against oil shale placers on the grounds stated above, and the Department having overruled all its conflicting decisions, it seems obvious that any declaration that such claims were null and void, heretofore made by this office solely upon that ground, are without legal effect and void.

Mr. Flynn's letter is returned and a copy of this letter is enclosed herewith.

Very respectfully,

Fred W. Johnson
Commissioner.

7-16 edt

[2013]

PLAINTIFF'S EXHIBIT 176

Appendix C-6 The Secretary of the Interor Washington Oct 31 1935

The Honorable The Secretary of the Navy.

My dear Mr. Secretary: Reference is made to the letter of November 1, 1933, of Secretary Ickes, containing

a list of oil shale placer mining claims, with descriptions of the land involved, situated within Naval Oil Shale Reserves Nos. 1 and 3 in Colorado and No. 2 in Utah, involved in adverse proceedings, and the status of each case.

The adverse proceedings involving all of the said claims were based upon a charge that annual assessment work had not been performed upon the claim or claims involved for a stated assessment year and that work had not been resumed thereon. You were informed in the above-mentioned letter that certain claims had been declared null and void in their entirety and others had been declared null and void to the extent of the interests of the parties served with notice, and that further action in all pending cases involving the question of assessment work on oil shale placers was suspended in this office pending a final decision in the courts upon the matter of the authority of this Department to attack the validity of oil shale placer claims upon the ground stated.

On June 3, 1935, the Supreme Court, in the case of *Ickes* vs. *Virginia-Colorado Development Corporation*, held that the United States is without authority to challenge the validity of an oil shale placer claim on account of failure to perform the annual assessment work, or to resume work, thereon. All previous action taken upon such charges in the cases referred to therefore is without effect and void. The status of the claims so far as this Department is concerned is that they are subsisting claims which, if located on valid discoveries of mineral by qualified locators, segregate the land against its subsequent withdrawal for Naval Oil Shale Reserves unless the claims have been abandoned.

Sincerely yours,

Charles West
Acting Secretary of the Interior

(initials illegible)

[2014]

PLAINTIFF'S EXHIBIT 177

The Secretary of the Interior Washington Nov 1, 1933

(Signed) Bradshaw Goerner Altizer Obenchain Johnson

The Honorable, The Secretary of the Navy

My dear Mr. Secretary: Reference is made to my letter of October 14, in reply to your letter of September 30, relative to Naval Oil Shale Reserves Nos. 1 and 3 in Colorado, and No. 2 in Utah, in which it was stated that the records of the General Land Office were being examined, and that you would be advised of the action had on mining locations within the said reserves as to which you have not been heretofore informed.

In order that you may have a complete record of the present status of all unpatented oil shale placers within these Reserves the following (word illegible) of the last action taken as to each claim or group of claims is supplied.

Lucy Agnes No. 1, N½ N½ and Lucy Agnes No. 2, S½ N½ Spc. 4, T. 5 s., R. 95 W., 6th P.M., were declared null and void on August 18, 1930, as to the interests of all claimants.

* * * *

[2016] Oyler No. 1, NE¼ Sec. 10, Oyler No. 2, W½ NW¼, N½ SW¼ Sec. 11; Oyler No. 3, E½ NW¼, W½ NE¼ Sec. 11 and Oyler No. 4 E½ NE¼ Sec. 11 and W½ SW¼ Sec. 12, T. 6 S., R. 95 W., 6th P.M. were declared null and void April 27, 1932, as to the interests of all claimants.

* * * *

[2019] Sincerely yours,

(Sgd) Harold L. Ickes
Secretary of the Interior

[2020]

PLAINTIFF'S EXHIBIT 178

United States Department of the Interior Bureau of Land Management Washington 25, D.C. (seal) (numbers illegible)

Detwiler Duckworth (name Illegible)

Memorandum Sep 30 1949 To: Director, Bureau of Mines From: Director, Bureau of Land Management Subject: Oil Shale Claims in Colorado

* * * *

[2021] After the passage of the Leasing Act, the Department endeavored, by adverse proceedings, to clear the public lands of oil shale placer locations on which little or no work had been done toward development of the oil shale placer deposits, and eventually two of these cases reached the United States Supreme Court. On January 6, 1930, in the case of Wilbur vs. United States (280 U.S. 318), and on June 3, 1935, in the case of Ickes vs. Virginia-Colorado Development Corporation (295 U.S. 639), the court held in effect that oil shale placer claims, each of which had been perfected by a valid discovery of oil shale, were protected by section 37 of the Leasing Act, and that the failure to do the $100 worth of assessment work annually for the benefit of each claim, as required by the United States mining laws, did not forfeit the claims to the Government, but only rendered them subject to loss through relocation by other persons if the assessment work was not commenced or resumed before such relocation was made.

By its decision of June 24, 1935, in the case of the Shale Oil Company (55 I.D. 287), the Department overruled all prior decisions and regulations of the Land Department insofar as they conflicted with the decision.

* * * *

[2022] If the Oyler Nos. 1, 2, 3 and 4 were each perfected by a valid discovery of oil shale made prior to leasing act of February 25, 1920 or the claimants were then in diligent prosecution of work looking to a discovery on each which was continued to a valid discovery and the

claims were not thereafter abandoned, the locators or successors would have valid claims, which, upon application and compliance with the regulations might be carried to patent.

* * * *

Rosco Bell
Associate Director

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* * * *

[2024]

PLAINTIFF'S EXHIBIT 180

Appendix C-3 Address only the Commissioner of the General Land Office

United States Department of the Interior General Land Office Washington May 4 - 1936

In reply please refer to 1283120 "N" CRB Information

Ida Dere, Box 477, Grand Valley, Colorado

Madam: Replying to your letter of April 22, 1936, you are advised the records of this office show that the Lucy Agnes Nos. 1 and 2 oil shale placers were declared null and void by this office on August 18, 1933, because of failure of the owners of the claims to file answer denying the charge that annual assessment work had not been performed on the claims for the year ending July 1, 1929, and that work had not been since resumed.

On June 3, 1935, the Supreme Court of the United States held in the case of Ickes vs. Virginia-Colorado Development Corporation, that the oil shale placer claimant, a party in that case, lost no rights [2025] by failure to do annual assessment work on its claims and that such failure gave the Government no right to declare the claims null and void. It further held that proceedings brought by the Government based solely on such a charge went beyond the authority conferred by law and did not affect the validity of the claims. In view of this holding of the Supreme Court, this office considers that it would be unnecessary to revoke its previous decision holding the

Lucy Agnes claims to be null and void. That decision being without authority of law is without any effect on the title arising from the location of the claims.

Very respectfully,

Fred W. Johnson
Commissioner.

4-30 mo

[2026]

PLAINTIFF'S EXHIBIT 181

51A27 3-A110 Box 546145

Box 477 Grand Valley, Colorado. April.22, 1936

Commissioner General Land Office, Washington, D.C.

Please advise the undersigned Ida Dere, why Lucy AgnessOil Shale Claims.Nos. 1 and 2. (being N½,N ½ and S½ N½ ,Sec 4,Township 5 South 95 West) should not be clear listed from the charge of "failure to do and preform annual assessment work" Being contest No. 11750, in keeping with and per tenor of your letter dated 7/29/35, which ordered the clear listing of Liberty Oil Shale Claim No 1, being contest No. 11823, address (word illegible) Register of Denver Land Office.These two claims were valid existing claims on 2/25/20, with several years assessment work having since been done. The field Division Inspectors convinced me on or about the year 1927or 28,that it would be useledd to go to the expense of answering the Government contest, but the Supreme Court Decision of 6/3/35,seemingly has det at naught all of these formrn challenges, where the only question was lack of assessment work.Please clear list my said claims or advise me what must be done to get them clear listed.

Yours Respectfully,

Ida Dere,
Grand Valley Colorado.

Answered 4/36 RBN 11750 25 Received Apr 27 1936
G. E. O. 000017

[2027]

PLAINTIFF'S EXHIBIT 182

Bowie & Groves Attorneys at Law First National Bank Building Grand Junction, Colorado March 25, 1936.

The Commissioner of the General Land Office, Washington, D.C. Dear Sir:

* * * *

I represent the Marshall estate, and I am writing in behalf of the executor and heirs at law to request such information as your office may be able to give us relative to the present status of such claims under the decision of the United States Supreme Court in Ickes vs. Virginia-Colorado Devopment Corporation, rendered June 3, 1935, and reported in 295 U. S. 639, wherein that Court held a claimant lost no rights by failure to do annual assessment work subsequent to passage of the Leasing Act, and that the Department of the Interior was without authority to cancel such claims for any such failure to do assessment work.

* * * *

[2028] If any proceedings may be required on the part of the Marshall estate to reestablish record of its rights in these claims, will you kindly give us your suggestions with reference thereto.

Yours very truly,

Alex Bowie

AB:H

[2029]

PLANTIFF'S EXHIBIT 183

United States Department of the Interior General Land Office Washington Apr - 7 1936

In reply please refer to 1341637 "N" CRB

Mr. Alexander Bowie, Attorney at Law, First National Bank Building, Grand Junction, Colorado.

My dear Sir: Replying to your letter of March 25, 1936, you are advised that as a result of the decision of the Supreme Court in the case of Ickes vs. Virginia-Colorado Development Corporation, the Department, on June 24, 1935, recalled and vacated its decision in the Virginia-Colorado Development Corporation case and overruled all of its previous decisions in conflict with the decision of the Supreme Court.

In view of the Supreme Court's decision and of the action taken by the Department, it is clear that a declaration holding a mining claim to be null and void because of failure to perform the annual assessment work is without effect and that the owner of the claim would still be en- [2030] titled to resume work on the claim in the same manner as if no adverse decision had been made. The decisions of this office in the cases referred to in your letter were based solely on the ground of failure to perform the annual assessment work on the claims.

Very respectfully,

Fred W. Johnson
Commissioner

4-6-eim

[2031]

PLAINTIFF'S EXHIBIT 184

Address only the Commissioner of the General Land Office

United States Department of the Interior General Land Office Washington 8/26/31

In reply please refer to 1337065 "N" CRB

United States vs. Estate of L. O. Marshall, et al.

R. Contest 12036. Motion for stay of proceedings: denied. Claims found to be null and void.

Register, Denver, Colorado.

Sir: By office letter of June 11, 1929, as amended by office letter of May 29, 1930, adverse proceedings were

directed against the Phenol No. 1, et al., oil shale placers upon the following charges:

1. That F. M. Dunlap and A. A. Dunlap, two of the locators of the claims, are dummy locators.
2. That annual assessment work to the value of $100 was not performed upon each or any one of the Phenol Nos. 1 to 42, inclusive, 44, 47 to 53, inclusive, 60 and T.N.T. No. 13 oil shale placers for the year ending July 1, 1929, and that work has not been since resumed.

Charge No. 1 was dismissed by office letter of April 23, 1931, because the same charge involving other claims had not been sustained by the Government in another proceeding.

* * * *

[2035] The evidence of the Government's witnesses is sufficient when not controverted by the defendant to sustain the charge and the claims are therefore declared to be null and void, subject to the defendant's right of appeal to the Secretary of the Interior within 30 days from notice.

Very respectfully,

Sgd Thomas C. Hovell
Acting Commissioner.

[2036]

PLAINTIFF'S EXHIBIT 185

Address only the Commissioner of the General Land Office

United States Department of the Interior General Land Office Washington Nov 19, 1931

In reply please refer to 1341637 "N" RLW

Oil shale. R. Contest 12038. Locations null and void. Case closed.

Register, Denver, Colorado.

Sir: By office decision of October 12, 1931, the T.N.T. Nos. 1 and 2 in T. 5 S., R. 99 W., 6th P.M.,oil shale placers were declared null and void to the extent of the interests of 10 of 11 parties of record because of their failures to file answers to the charges directed by the Chief of Field Division on July 1,1931.

That annual assessment work to the value of $100 was not performed upon each and every one of the T N T Nos. 1 and 2 oil shale placers for the year ending July 1, 1930, and that work had not been resumed on each of said claims June 17, 1931, when a challenge to the validity of each of said claims was posted thereon on behalf of the United States.

That annual assessment work to the value of $100 was not performed upon each or any of the said claims for the year ending July 1, 1930, and that work has not since been resumed.

[2037] Notice of the charges was served on the remaining party on July 25, 1931, and in your letter of October 16, 1931, you stated that no answer was filed by the party within the time allowed.

The failure of the contestee to file answer denying the charges is taken as an admission by him of the truth thereof, in view of which the T.N.T. Nos. 1 and 2 oil shale placers are declared null and void in their entirety and the United States has taken possession of the lands within the claims for its own uses and purposes. The case is closed.

Advise the party hereof by ordinary mail.

Very respectfully,

(sg) C. C. Moore
Commissioner

mc

[2038]

PLAINTIFF'S EXHIBIT 186

14x R. 1x C.F.D.

United States Department of the Interior General Land Office Washington Jan 9 1932

In reply please refer to 1332500 "N" RLW

Oil shale. R. Contest 12004. Locations null and void. Case closed in part.

Register, Denver, Colorado.

Sir: By office decision of October 12, 1931, the Hydrocarbon Nos. 184 to 187, inclusive, oil shale placers, were declared null and void as to the interest of one of seven parties reported as having interests in the claims because of his failure to file answer to the charge directed by office letter "N" of April 23, 1931:

That annual assessment work to the value of $100 was not performed upon each or any one of the Hydrocarbon Nos. 184 to 187, inclusive, oil shale placers, for the year ending July 1, 1930, and that work has not been since resumed.

The names of the heirs of three of the remaining parties and the names of the heirs of an additional party having been furnished by the Chief of Field Division, notices [2039] of the charge were served on 14 of the 20 parties now reported as having interests in the claims on April 30, May 1, 2, 4 and 6, October 23, 1931 and in your letter of December 1, 1931 you stated that no answers were filed by the parties served within the time allowed.

The failures of the contestees served with notices to file answers denying the charge are taken as admissions by them of the truth thereof, in view of which the Hydrocarbon Nos. 184 to 187 oil shale placers are declared null and void to the extent of the interests of the parties served and the United States has taken possession of the lands within the claims for its own uses and pur-

poses. The case is closed to the extent of the interests of the parties served.

Advice the parties hereof by ordinary mail.

Very respectfully,

Commissioner.

1-6-mr.

* * * *

[2042]

PLAINTIFF'S EXHIBIT 187

United States Department of the Interior General Land Office Washington 1332-500

In reply please refer to 1332500 "N" RLW

Oil shale. Instructions. Oct. 14 (illegible).

Mr. John T. Murphy, Chief of Field Division, G.L.O., Santa Fe, New Mexico.

Sir: By office decisions of October 12, 1931, and January 9, 1932, the Hydrocarbon Nos. 184 to 187 inclusive, oil shale placers, were declared null and void to the extent of the interests of all except six parties of record.

* * * *

Very respectfully,

Thomas C. Howell
Commissioner.

10-11-ML

[2043]

PLAINTIFF'S EXHIBIT 188

Memorandum for Mr. Carpenter. June 10, 1936

Subject: Oil shale placer locations in Western Colorado and eastern Utah.

* * * *

An effort has been made by the Department to eliminate oil shale claims believed to be invalid but the desired result has not been attained. The grounds of the proceedings in two outstanding cases were charges of failure on the part of the locators to perform the annual assessment work required by law, but the decisions of the Supreme Court have been adverse to the contentions of the Government. Wilbur vs. Krushnic et al (280 U.S. 306), rendered January 6, 1930, and Virginia-Colorado Development Company vs. Ickes (295 U.S. 639).

[2044] Notwithstanding these decisions, however, as to the effect of failure to perform annual assessment work, other grounds for proceedings may be available in other cases. Proof that a valid discovery of a mineral has not been made, or that the claims are fraudulent, or that they have been abandoned would be sufficient grounds for a finding that these locations are invalid. However, it is probable that the Department in the past has experienced difficulty in obtaining sufficient evidence to support charges on any of these grounds.

* * * *

[2046]

PLAINTIFF'S EXHIBIT 189

Only the Commissioner of the General Land Office United States Department of the Interior General Land Office Washington Mch 1, 1937

In reply please refer to 1376265 "N" WST Evanston 07975-08080-08121 Placer claims. Status.

The Director, Geological Survey.

My dear Dr. Mendenhall: Reference is had to the letter of the Administrative Geologist dated January 30, 1937, relative to drilling for oil and gas which had been done on certain subdivisions that were included in oil and gas prospecting permits Evanston 07975, 08080 and 08121, now canceled. The subdivisions involved are, according to previous correspondence, SE ¼ NE ¼ Sec.

23, SW ¼ NW ¼ Sec. 24, SE ¼ SE ¼, SW ¼ SW¼ Sec. 26, NE ¼ NE ¼ Sec. 35, T. 21 N., R. 117 W., 6th P. M., Wyoming

Since the date of the letter addressed to the oil and gas supervisor at Casper, Wyoming, November 6, 1933 (copy of which was sent to you), the United States Supreme Court, in the case of Ickes v. Virginia-Colorado Development Corporation (295 U. S. 639), has rendered a [2047] decision to the effect that a mining claim does not become subject to forfeiture to the Government merely for failure on the part of a claimant to perform the annual assessment work required under the United States mining laws but that such failure merely renders the claim subject to relocation by other parties.

As the charge made against the various claims was merely that the annual assessment work had not been performed nor resumed, the adverse proceedings, which were instituted by the Government against the claims, were vacated and the lands involved must therefore be regarded as still covered by such claims.

Very respectfully,

(Sgd) Fred W. Johnson
Commissioner.

[2048]

PLAINTIFF'S EXHIBIT 190

United States Department of the Interior Geological Survey Washington Jan 30 1937 8

The Commissioner, General Land Office.

By letter dated October 16, 1933, there was transmitted to your office a copy of a letter dated September 12, 1933, from the oil and gas supervisor, Casper, Wyoming, requesting a report as to the status of oil placer claims involving land on which certain wells cited in the supervisor's letter are located. The wells, drilled prior to the mineral leasing act of February 25, 1920, are located

within canceled oil and gas prospecting permits Evanston 07975, 08080 and 08121, Fossil field, Lincoln County, Wyoming.

By letter of November 6, 1933, addressed to the supervisor, your reference 1375265 "N" WST, your office reported that some of the placer claims had been declared null and void in their entirety, while others had been declared null and void as to part interests with proceedings still pending against remainder. It was understood that final action as to cancellation of the placer claims was dependent on a decision then pending before the U. S. Supreme Court.

Since the wells involved are either flowing water or are standing with water near the surface with showings of oil and gas in evidence, the Geological Survey is desirous of proceeding with plugging operations if there are no valid placer claims to interfere. Because the Public Works funds allotted to the Geological Survey for plugging wells will not be available for use after the end of this fiscal year, the plugging work should commence at an early date.

You are requested to inform the Geological Survey as expeditiously as possible the status of the placer claims involving those tracts upon which the wells listed in the supervisor's letter of September 12, 1933, are located. Since the supervisor's letter will be found in your files, the descriptions of the tracts are not repeated here.

For the Director,

Julian D. Sears
Administrative Geologist.

Received
Feb 1 1937
G.L.O.

Answered 3/1/37
NST-N

[2049]

PLAINTIFF'S EXHIBIT 191

United States Senate Committee on the Judiciary June 9, 1941

see reply 7/25/41 file with Proposed 77th Cong. re Miners Claims on the Public Domain

[Stamps: Interior Dept. Received Jun. 12 1941 Secretary's Mail Center To Solicitor Interior Dept. Received Jun. 12 1941 Solicitor]

Interior Dept. Received Jun 11 1941 Office of The Secretary

Hon. Harold L. Ickes Secretary of the Interior Interior Department Washington, D.C.

My dear Mr. Secretary: I am enclosing a letter I have received from Mr. W. S. McCarthy, Secretary of the Mountain States Development Company, Union Pacific Building, Salt Lake City, Utah, concerning the advisability of enacting legislation similar to the provisions of H. R. 6560 of the 3rd Session of the 76th Congress, a bill relating to placer mining claims. (Rec. 1-139-76th Cong re this bill) I am enclosing a copy of this bill for your information.

I will greatly appreciate your viewpoint on this matter, and would particularly like to know any new developments that may have arisen since the beginning of the present Congress.

Kindly return the enclosed letter and bill with your reply.

Yours very truly,

Abe Murdock

m:b

[2050]

PLAINTIFF'S EXHIBIT 192

The Secretary of the Inter Washington Jul 25 1947

File Copy
Surname:

Hon. Abe Murdock, United States Senate.

Solicitor's Off.
Speck
Wolfsohn
Edelstein
Fisher
Chapman
Dempsey
(illegible)

My dear Senator Murdock: I regret that the pressure of legislative matters has caused delay in replying to your letter of June 9 with reference to H. R. 6560 of the 76th Congress.

With your letter was enclosed a letter addressed to you from the Secretary of the Mountain States Development Company which urges that you gave your support to H. R. 6560, a bill relating to placer mining claims. That bill was introduced at the request of the Department for the purpose of obtaining authority to clear up certain claims which have been pending since the passage of the Mineral Leasing Act. These claims were saved by section 37 of the act and because of a deficiency in the law it has not been possible to require that they be either developed or abandoned. The bill was passed by the House but because of amendments by the Senate Public Lands Committee which would have made the measure of questionable value it failed of enactment.

I have thought that the proposed investigation under Senator O'Mahoney's resolution, S. Res. 53, would provide a good opportunity to present this matter and to obtain a full consideration of its merits, and pending the commencement of the investigation I have not submitted the bill to the present Congress. However, if you should desire to introduce the measure, I shall designate a member of my staff to explain its purposes and provisions in full to you. Copies of the bill, as introduced and as subsequently amended, and a copy of the Department's report on the original bill are enclosed. In accordance with

your request, your correspondent's letter is returned herewith.

Sincerely yours,

(Sgd.) Harold L. Ickes
Secretary of the Interior.

Mailed by W.K.M.
Enclosure 316635.

[2051]

PLAINTIFF'S EXHIBIT 193

Department of the Interior Office of the Secretary
Washington Nov 10 1941

Solicitor
Duncan
Matthew
Edelstein
Appd.Sol.Off.

Mr. C. S. Scholer, 818 Lumber Exchange Building, Minneapolis, Minnesota.

My dear Mr. Scholer:

From Solicitor
Nov 7 1941
To GLO

* * * *

[2052]

Without making any assumption as to the validity of your claims, it may be stated that the law is settled that the Government cannot forfeit a mining claim for failure to perform annual assessment work as such failure can only be taken advantage of by a relocator (Wilbur v. Krushnic, 280 U. S. 306). The Secretary of the Interior has authority to determine that a claim is invalid for lack of discovery, for fraud, or other defect, or that it is subject to cancelation for abandonment, but his attempt to forfeit a claim for default in assessment work is without authority (Ickes v. Development Corp., 295 U. S. 639).

* * * *

[2053]

Sincerely yours,

(Sgd.) Oscar L. Chapman
Assistant Secretary.
(Stamp)

[2054]

PLAINITFF'S EXHIBIT 194

The Secretary of the Interior Washington May 21, 1943

1943382 "N" [Stamp] Interior Dept. Received Apr 29 1943 First Assistant Secretary

To Secretary 12/21/42 (Words illegible)

File Copy
Surname:
G.L.O.

Bradshaw
Barash
Altizer
Havell
Wolfsohn
Johnson
Duncan
Hilton
Edelstein
(illegible)
Wright
(illegible)
Chapman
F.
(illegible)
Fortas
(illegible)

My dear Mr. Vice President: There is enclosed herewith a draft of proposed legislation relating to placer mining claims on lands valuable for phosphate, sodium, potassium, oil, oil shale and gas.

The mining claims that would be affected by the proposed legislation were located prior to February 25, 1920, the date of enactment of the mineral leasing law which excepts from its operation "valid claims existent at the time of passage of (the) Act and thereafter maintained in compliance with the laws under which initiated." Since that date lands valuable for the minerals named have not been subject to location under the general mining laws but could be acquired only by lease.

Notwithstanding that for the past 22 years no location could be made on account of these minerals, many thousands of such claims are still of record in county recorder offices within the public land states. Many of these claims may have been abandoned by the locators but their putative existence constitutes a cloud on the title and hampers this Department in its administration of the public land laws particularly in the matter of issuing grazing and mineral leases and permits.

Neither this office nor any other Federal office has a record of mining locations because the law does not require that they be filed for record in the land offices. The result is that this Department must either issue mineral

and grazing leases and permits for lands subsequently found to be exclusively held and possessed by others under the mining laws with consequent loss to its lessees and permittees or before such leases or permits are granted cause an investigation to be made to determine whether there are any valid mining claims on the land.

All possible legal means of solving the difficulty have been tried. Conceiving that the mineral leasing act conferred such authority upon him, the Secretary of the Interior challenged in Departmental proceedings the validity of thousands of these claims. After full hearings the claims were declared void because of default in assessment work.

In Wilbur v. Krushnic, 280 U. S. 306 (1930) and Ickes v. Virginia-Colorado Development Corp., 295 U. S. 639 (1935), the Supreme Court held that the proceedings exceeded the authority of the Secretary and were therefore without effect.

Thus the claimants of these locations are in a decidedly more favorable position than is any other class of public land claimants including the owners of other types of mining claims. They are permitted to enjoy valuable

[Stamps: Interior Dept. Secretary's Mail Center Dec 21 1942 To Solicitor; Interior Dept. Received Apr 29 1943 Asst. Sec'y's Office; Interior Dept. Received Apr 29 1943 Under Secretary; Interior Dept. May 20 1943 Secretary's Mail Center; (Words illegible) May 20 1943 Secretary, Mailed by (illegible)]

Copy for Secretary's Office

estates [2055] in land without incurring any obligation whatever. Although the law requires that they perform annually assessment work of the value of $100 on each claim, they are subject to no penalty if they fail to do so. As a rule they have no taxes to pay but are permitted to enjoy estates in land without assuming any liability.

It is essential to the proper administration of the lands that some satisfactory disposition be made of the large number of invalid and speculative claims which exist on the public domain. The situation is one that calls for legislative action and the attached draft of a

bill has been prepared for that reason. The provisions of the bill would afford an effective means of determining the status of the public lands affected and would enable this Department to administer the lands subject to lease or other form of appropriation free from interference with the rights of the owners of valid mining claims. They would permit of the satisfactory disposal of numerous claims which probably have been abandoned but which under present practice can only be disposed of at great expense, if at all, because of the difficulty and often of the impossibility of locating the owners of the claims. Sections 2 and 3 of the proposed bill would provide for a termination of mining claims under the conditions stated. Upon such termination the land in the claims would become subject to disposal under applicable public land laws, and the minerals in the land for which the claims were located would become subject to disposition only under the provisions of the mineral leasing laws.

A similar proposal was made by me to the 76th Congress. This proposal resulted in the introduction of the bill H. R. 6560, which was passed by the House of Representatives on July 6, 1939.

In view of the considerations set out herein, I recommend that the proposed bill be submitted to the Senate for its consideration.

I am informed by the Director of the Bureau of the Budget that there is no objection to the submission of this bill.

Sincerely yours,

(Sgd.) Harold L. Ickes
Secretary of the Interior.

Hon. Henry A. Wallace,
President of the Senate.
Enclosure 2829144.

Identical Letter Sent To Speaker of the House

[2056]

PLAINTIFF'S EXHIBIT 195

1957279 "L" PRS 7439

File Copy
Surname:
(G.L.O.)
Barach
Howell
Johnson
Ryan
Kavanagh
Edelstein
Appd.Sol.Off.

United States Department of the Interior Office of the Secretary Washington June 17 1943

Hon. Edwin C. Johnson, United States Senate.

My dear Senator Johnson: The Secretary has referred to me for consideration and reply to your letter of May 25, transmitting a letter from Mr. Hugh Burdick of De Beque, Colorado, concerning the grazing of stock on unpatented oil shale placer claims. 2-139 Oil Shale

The Department has been studying for some time the problem which Mr. Burdick complains of and is now awaiting a comprehensive report of field investigation which is being made in the same general area in an analogous case. The regional field examiner of the General Land Office is being directed to have Mr. Burdick interviewed during the investigation which that office is making. The Grazing Service has also made an extensive investigation of the matter. When a full report of the investigation is received, such appropriate action will be taken to protect the interests of the United States and the ranch owners as the facts and the law warrant.

Many of the unpatented oil shale claims to which your constituent refers are obviously being held speculatively, not for bona fide development of the mineral but for the income derived from leasing the surface for grazing. This has resulted in substantial interference with the administration of the Taylor Grazing Act. Departmental proceedings instituted some years ago challenging the validity of thousands of oil shale claims did not prove fruitful.

To alleviate the peculiar situation which has developed from these oil shale claims, upon recommendation of this Department, S. 1139 has been introduced in the United States Senate. This bill would require the oil shale claim-

ants to record their claims in the General Land Office within a specified time, and to perform annually the assessment work contemplated by Section 2324, Revised Statutes, under penalty of forfeiture for failure to comply. 2-147 Admin

Mr. Burdick's letter is returned.

Sincerely yours,

(Sgd.) Oscar L. Chapman
Assistant Secretary.

Enclosure 2829159.
MB:gld 6-12-43

Copy for the Secretary's Office

[Stamps: To Secretary Jun 12 1943 For signature; Interior Department Received Jun 14 1943 Office of and Utilization; Interior Dept. Received Jun 14 1943 Solicitor; From Solicitor Jun 15 1943 For Signature; Mailed by Axtell]

[2057]

PLAINTIFF'S EXHIBIT 196

United States Department of the Interior General Land Office Washington 25, D. C.

1339694 "N" Feb 14 1944 Mr. Warren Paddock, DeBeque, Colorado

File Copy
Surname:
Duckworth
Cummiford
Altizer
Bradshaw
Wolfsohn

My dear Mr. Paddock:

* * * *

Shale King Nos. 6, 7, 8, 9,	covering	sec.	25, T. 5 S., R. 101 W.,
Massive,	" SW¼	"	23, T. 5 S., R. 101 W.,
Massive Nos. 1, 2,	" E½	"	26, T. 5 S., R. 101 W.,
Massive No. 3,	" NE¼	"	35, T. 5 S., R. 101 W.,
Massive Nos. 4, 5, 6, 7,	" all	"	36, T. 5 S., R. 101 W.

Adverse proceedings against the claims were ordered May 13, 1930 on the charge that the assessment work

had not been done on the claims during certain assessment years. The parties failed to file answers denying the charge, and by our decision of August 16, 1930 the claims were declared null and void. That decision, however, was rendered ineffective by reason of the decisions of the United States Supreme Court in the cases of Wilbur V. Krushnic (280 U.S. 306), and Ickes v. Virginia-Colorado Development Corporation (295 U.S. 639). In the latter case the Court said that although the Secretary of the Interior conceivably might declare unpatented mining locations null and void for various reasons, a failure of the owner to perform the annual labor does not render the claims subject to forfeiture by the United States.

This office has received information from a number of persons in your locality that various individuals alleging ownership of oil shale locations have been leasing the claims for the grazing of stock. An investigation of this reported practice has been made and the matter is under consideration with a view to taking appropriate action.

Official Copy

Very truly yours,

Fred W. Johnson
Commissioner.

2-9-dms
Copy for General Land Office Files

[2058]

PLAINTIFF'S EXHIBIT 197

Denver, Col. June 15, 1944. Mr. Louis Hoffman Division "N" General Land Office Washington 25, D.C.

Dear Sir: Will you advise me of the present status of the Contest11855, against the Big Pete Nos. 3,6,7, et al oils hale placer mining claims against which Contest was directed by "N" UEG, of May 16, 1928, 1300099.

The records of the Denver Land Office show that the claims have been declared null, void as to the parties

served with the notice of Contest except as to the Daisey, Ivy and Lucile. [N/Chap ans'd 7-5-44 A.J.M. "N"]

I am making separate requests on two separate groups or cases and will get you to favor me a reply on separate sheets.

Thanking you, I am very truly,

W. Porter Nelson
607 California Bldg
Denver 2, Colo

(Stamp)

[2059]

PLAINTIFF'S EXHIBIT 198

1300099 "N" The General Land Office

File Copy
Surname:
Meyer
(illegible)
Altizer
Bradshaw

United States Department of the Interior General Land Office Washington Jul 5 - 1944

Mr. W. Porter Nelson, 607 California Building, Denver 2, Colorado.

My dear Mr. Nelson: I have your letter of June 15 asking for the present status of the contest No. 11855 against the Big Pete Nos. 3, 6, 7, and other oil shale placer mining claims.

The records of this office show that by our letter of May 16, 1928, to the Register at Denver, Colorado, adverse proceedings were directed against the Big Pete Nos. 3, 6, 7, Davey Nos. 1, 3, 5, 6, 7, 8, Ivy No. 1, Lucile Nos. 1 to 7, and other oil shale placer claims, charging that valid assessment work had not been performed upon or for the benefit of any of the claims for any of the assessment years commencing July 1, 1921, and ending July 1, 1927. The charge was amended November 16, 1928, to allege that valid assessment work was not performed upon or for the benefit of any of the claims for any of the years ending July 1, 1921 to 1928 inclusive.

On June 25, 1930, new adverse proceedings were directed charging:

"That annual assessment work was not performed upon each or any one of the Big Pete Nos. 3, 6, 7, Buffalo Nos. 1 to 12 inclusive, Colorado Nos. 1 to 8 inclusive, Columbine Nos. 1 to 8 inclusive, Con Creek Nos. 1 to 8 inclusive, Davey Nos. 1, 3, 5 to 8 inclusive, Denver Nos. 1 to 8 inclusive, 62, 69 to 72 inclusive, 113, 114, 116, Dere Nos. 1, 2, 7, Ivy No. 1, Little Joe Nos. 1, 2, 3, Lucile Nos. 1 to 7 inclusive, Texas Nos. 1, 2, 2, 4, 6, oil shale placers for the year ending July 1, 1929, and that work has not been resumed."

The Register was directed to notify the claimants that by reason of the default of said assessment work the United States has taken possession of the lands within the claims for its own uses and purposes.

Notices of the charge were issued under contest No. 11855 by the Register and served on W. C. Browning, C. L. Sloan, J. H. Ginnet and the General Shales Corporation, reported to be the owners of the claims. As no answer was filed within the time allowed, the Davey Nos. 1, 3, 5, 6, 7, 8, the Ivy No. 1, the Big Pete Nos. 3, 6, 7, and other oil shale placer locations were declared null and void and the case closed by our [2060] letters of June 24, 1931, to the Register. By our letter of July 7, 1931, to the Register the Lucile Nos. 1 to 7 oil shale placer locations were also declared null and void and the case closed.

However, in the case of the Shale Oil Company (55 I.D. 287) the Department held, in view of the decision of the Supreme Court in the case of The Virginia-Colorado Development Corporation (295 U.S. 639) that the adverse proceedings in that case, based on charges of failure to do annual assessment work must be held as without authority of law and void.

Very truly yours,

(sgn) Fred W. Johnson
Commissioner.

7/3/sas

[2061]

PLAINTIFF'S EXHIBIT 199

In Reply Refer To: 1069641 "N"

Address Only The Commissioner of The General Land Office

United States Department of the Interior General Land Office Washington Jul 4 - 1944

File Copy
Surname:
Meyer
Brooks
Altizer
Bradshaw

Mr. W. Porter Nelson, 607 California Building, Denver 2, Colorado.

My dear Mr. Nelson: I have your letter of June 15 asking for the present status of the contest No. 12478 directed against the Sid Nos. 1 to 22 oil shale placer locations by our letter No. 1069641 of July 16, 1930.

The letter referred to directed new adverse proceedings against the locations mentioned on the charge "That annual assessment work to the value of $100 was not performed upon each or any one of the Sid Nos. 1 to 22 inclusive, oil shale placers for the year ending July 1, 1930, and that work has not been since resumed." The letter also directed service of notice of the charge on E. B. McNair and George W. Habberset, the record title holders of the locations.

On September 16, 1930, answer was filed in the Denver Land Office by E. B. McNair in which no denial is made of the allegations contained in the charge, but contestee contended that the Sid Nos. 1 to 22 claims having been located prior to the leasing act of February 25, 1920, constituted valid claims existent February 25, 1920, and maintained in compliance with the laws under which they were initiated, etc.

By our letter of June 24, 1931, to the Register it was stated that as the answer merely objected to the charge without denying the allegations therein, the contestees were allowed 30 days from notice in which to file a proper answer or appeal to the Secretary of the Interior and that if no action was taken within the time allowed the locations would be declared null and void without fur-

ther notice. On August 25, 1931, the Register reported no action taken and transmitted evidence of service consisting of registry return receipt signed by E. B. McNair July 24, 1931. Accordingly by our letter of October 12, 1931, to the Register the locations were declared null and void as to the interest therein of E. B. McNair and the Register was directed to serve new notice of the decision of July 16, 1930, on George W. Habberset. The records show that such notice was served October 24, 1931, and in his letter of December 1, 1931, the Register reported that no answer was filed by Habberset within the time allowed. Accordingly by our letter of January 7, 1932, to the Register it was held that "The failure of the contestee to file answer denying the charge is taken as an admission by him of the truth thereof, in view of which the Sid Nos. 1 to 22, inclusive, oil shale placer locations are declared null and void in their entirety and the United States has taken possession of the lands within the claims for its own uses and purposes." The case was also closed by that letter.

Official Copy Copy for General Land Office Files

[2062] However, in the case of the Shale Oil Company (55 I.D. 287) the Department held, in view of the decision of the Supreme Court in the case of The Virginia-Colorado Development Corporation 295 U.S. 639) that the adverse proceedings in that case, based on charges of failure to do annual assessment work must be held as without authority of law and void.

Very truly yours,

(sgn) Fred W. Johnson
Commissioner.

7/3/sas

[2063]

PLAINTIFF'S EXHIBIT 200

Address Only The Commissioner of The General Land Office (Stamp)

United States Department of the Interior General Land Office Washington 25, D.C. Jul 26 1945

In Reply Refer To: 2054653 "N" (Stamp)
2-139 Oil Shale

Mr. John V. Dougherty, 622 White Avenue, Grand Junction, Colorado.

My dear Mr. Dougherty: Reference is had to your letter of June 18 concerning lands in secs. 17, 18 and 19, T. 7 S., R. 100 W., 6 P.M., for which you hold a grazing permit.

Our records show that the S ½ sec. 17, all of secs. 18 and 19 are covered by Ute Rock Nos. 1 to 6 and Nos. 23, 24, 25, and 26, oil shale placer mining claims located prior to the oil shale leasing act of February 25, 1920, (41 Stat. 437).

[filed in 10-3 general] Departmental decision of March 3, 1932 affirmed our decision of December 2, 1931, which declared these claims null and void for failure to perform the annual assessment work during a certain year. The decisions, however, were made ineffective by reason of the decisions of the United States Supreme Court in the cases of Wilbur v. Krushnic (280 U.S. 306), and Ickes v. Virginia-Colorado Development Corporation (295 U.S. 639). In the latter case the Court said that although the Secretary of the Interior conceivably might declare unpatented mining locations null and void for various reasons, a failure of the owner to perform the annual labor does not render the claims subject to forfeiture by the United States.

This office has received information from a number of persons in your locality that various individuals alleging ownership of oil shale locations have been leasing the claims for the grazing of stock. The question of what action shall be taken in the matter is now under consid-

eration. A copy of "Our Last Land Frontiers" will be sent you under separate cover. Dec 1-7-30-45 + 6-7 Colorado

Very truly yours,

(Signed) Fred W. Johnson
Commissioner.

Received Division of Information 1945 Jul 30 PM 12 00 Director's Office

ECD:mgl 7/9

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* * * *

[2065]

PLAINTIFF'S EXHIBIT 202

3 x R. 1 x C.P.D. United States Department of the Interior General Land Office Washington Jun 8 1932

In Reply Please Refer To: 1365365 "N" RLW

Oil Shale. R. Contest 12183. Locations null and void. Case closed.

Register, Denver, Colorado.

Sir: By office letter "N" of April 26, 1932, promulgating departmental decision of March 3, 1932, the Ute Rock Nos. 1 to 43 inclusive, 45 to 50 inclusive, and Pine Nos. 1 to 15 inclusive, oil shale placers, T. 7 S., Rs. 99, 100 and 101 W., 6th P. M., Colorado, were declared null and void in their entirety, service having been had on the parties of record upon the charge directed by the Chief of Field Division on July 3, 1931:

"The annual assessment work to the value of $100 was not performed upon the said oil shale placers for the year ending July 1, 1931, and that work has not since been resumed."

The names of two additional parties interested in the claims having been furnished by the Chief of [2066] Field Division, notices of the charge were served on

such parties on January 30 and March 28, 1932, and in your letter of May 12, 1932, you stated that no answers were filed by the parties within the time allowed.

The failures of the contestees to file answers denying the charge are taken as admissions by them of the truth thereof, in view of which the Ute Rock Nos. 1 to 43 inclusive, 45 to 50 inclusive, and Pine Nos. 1 to 15 inclusive, oil shale placers, are declared null and void in their entirety and the United States has taken possession of the lands within the claims for its own uses and purposes. The case is closed.

Advise the parties hereof by ordinary mail.

Very respectfully,

(sg) C. C. Moore
Commissioner.

6-3-ML

[2067]

PLAINTIFF'S EXHIBIT 203

United States Department of the Interior Grazing Service Office of the Director Salt Lake City 9 Box 659 December 3, 1945.

Hilton
Creech
Moyer
Billig
Wassemer
Edelstein
F. S. Cohen
Gardner

In Reply Refer To: [Stamp: Interior Dept. Secretary's Mail Center Dec-7 1945 To Solicitor] Address only The Director Grazing Service

Memorandum for the Secretary.

Orderly administration of the grazing districts established since June 28, 1934, under the provisions of the Taylor [2-139 Oil Shale] Grazing Act, comprising large areas of the public domain in western Colorado, eastern Utah and southern Wyoming, has been affected seriously by the practice of numerous unpatented oil shale mining claimants leasing the located lands to stockmen for grazing purposes. The administrative difficulties resulting

from the practice have long been a serious problem. A solution has been diligently sought by the Grazing Service. The unsatisfactory situation persists and becomes more acute from year to year.

The mining locations in question were initiated under the placer mining laws prior to the enactment of the Mineral Leasing Law of 1920, and little or no annual assessment work or other mining work has since been performed upon the claims and cannot be required by the Government under existing law as announced in decisions of the Supreme Court of the United States in the cases of Wilbur v. Krushnic, 280 U. S. 306 (1930), and Ickes v. Virginia-Colorado Development Corporation, 295 U. S. 639 (1935),

[Stamps: Interior Dept Dec 7 - 1945 Solicitor; From Solicitor Dec 12 1945 For Signature]

* * * *

[2069] Following a conference in the Solicitor's Office, attended by members of the staff and representatives of the General Land Office and the Grazing Service, it was agreed that in the circumstances it would be advisable that the Department establish the administrative practice of not recognizing any rights in the mining locators to the surface resources, except such as may be required for actual mining purposes and that permits or licenses to utilize the grazing resources be issued under the Taylor Act and the Federal Range Code to qualified livestock owners, with the inclusion in the present form of grazing permits or licenses of suitable provisions to that effect. It is therefore recommended that the present forms used in the issuance of grazing permits or licenses be amended to include the following or similar language:

"This permit or license applies to all Federal range within the area described, including the surface of unpatented mining locations or claims not needed by the locator for mining purposes or in extracting and removing the mineral deposits therein. It is understood that the permittee or licensee will exercise due care not to disturb or damage any mining improvements thereon and that he will be responsible for any damage to such min-

ing improvements resulting from the grazing of his livestock upon any such claims under this permit or license."

If you approve of this procedure, it is believed that it will be of material help in the administration of the large areas in grazing districts included in numerous unpatented mining claims. In the event the suggested procedure would in any case result in litigation between the mining locators and the grazing permittees, steps may be taken through intervention on behalf of the Government, to secure a judicial determination of the respective rights of the Government and all the parties concerned, and of other important questions which should be settled as early as practicable.

(Sgd.) C. L. Forsling
Director of Grazing.

Approved: Jan -3 1946

(Sgd.) Oscar L. Chapman
Assistant Secretary.

[2070]

PLAINTIFF'S EXHIBIT 204

The Secretary of the Interior

Washington 25, D. C. Mar 21 1946
To Secretary 8/15/46 For signature

2088300 "N" P.R.S. 1479 2-139
General

(Word illegible)
Hoffman
Bradshaw
Wolfsohn
Johnson
Edelstein
Appl. Sol. Off.
Doty

[Stamps: Interior Dept. Secretary's Mail Center Mar 18 1946 To Solicitor; Interior Dept. Mar 18 1946 Solicitor; From Solicitor Mar 19 1946 For Signature; Interior Dept. Mar 19 1946 Asst. Secretary]

My dear Senator Myers: I have received your letter of March 6, with which you transmitted one from Mrs. H. C. Emmett concerning her interest in certain oil shale mining claims.

The records of this office show that based on adverse proceedings, the Oil Dome Nos. 1 to 12, inclusive, oil shale placer mining claims, mentioned by Mrs. Emmett as owned by the Western Shale Oil Company, were declared null and void on November 10, 1931. However, in the case of the Oil Shale Company (55 I.D. 287, 290), decided June 24, 1935, the Department recalled and vacated its action in the Virginia-Colorado Development Corporation case (53 I.D. 666), and overruled its action in other cases, including this one.

* * * *

Sincerely yours,

(Sgd.) Oscar L. Chapman
Acting Secretary of the Interior.

Hon. Francis J. Myers,
United States Senate.

Mailed by Roady
Enclosure 96
3-14-kg

[2071]

PLAINTIFF'S EXHIBIT 205

Department of the Interior General Land Office Washington Nov 10 1931

In Reply Refer To 1412210 "N" RLW

Oil shale. R. contest 6257. Locations null and void. Case closed.

Register, Salt Lake City, Utah.

Sir: By office letter "N" of June 30, 1931, adverse proceedings were directed against the Oil Dome Nos. 1, 2, 3, 4, 5, 6 Sec. 1, Nos. 7, 8, 9, 10, 11 and 12 Sec. 12, T. 11 S., R. 25 E., S. L. M., oil shale placers, upon the charge:

"That annual assessment work to the value of $100 was not performed upon each or any one of the Oil Dome Nos. 1 to 12 inclusive, oil shale placers for the year ending July 1, 1929, and that work had not been re-

sumed on said claims May 6, 1930, when challenges to the validity thereof were posted thereon on behalf of the United States."

Notices of charge issued by you and were served on two of three claimants reported as having interests in the claims on July 20, 1931, and in your letter received in this office October 12, 1931, you stated that no answers were filed by the parties served within the time allowed. [2072] The failures of the contestees served with notices to file answers denying the charge are taken as admissions by them of the truth thereof, in view of which the Oil Dome Nos. 1 to 12 inclusive, oil shale placers are declared null and void to the extent of the interests of the parties served and the United States has taken possession of the lands within the claims for its own uses and purposes. The case is closed to the extent of the interests of the parties served.

Advise the parties hereof by ordinary mail.

Very respectfully,

(sg) Thos. C. Howell
Acting Commissioner.

11-7-ML

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* * * *

[2075]

PLAINTIFF'S EXHIBIT 207

United States Department of the Interior General Land Office Washington Mar 27 1946

2086165 "N"

Messrs. Tupper, Smith and Holmes, Raso Building, Grand Junction, Colorado.

The General Land Office
File Copy
Surname:
Cummiford
Duckworth
Bradshaw
Howell

Gentlemen: Your letter of January 5 has been transmitted to this office by the Register of the District Land Office at Denver, for answer.

On October 21, 1937, patent No. 1092929, issued to Vernon G. Huntley for the W ½ SW ¼ sec. 4; E ½ SE ¼ sec. 5; NW ¼, SW ¼ NE ¼, W ½ SE ¼; NE ¼ SW ¼ sec. 9; T. 6 S., R. 100 W., 6th P.M., with the reservation to the United States of the coal and other minerals in the land, together with the right to prospect for, mine, and remove the same. On April 25, 1939, patent No. 1102395, issued to Hugh Campbell for the SW ¼, SW ¼ SE ¼, sec. 5; NE ¼ NW ¼, NE ¼, NE ¼ SE ¼ sec. 8; W ½ SW ¼, SE ¼ SW ¼, sec. 9; NE ¼ NW ¼, sec. 16; T. 6 S., R. 100 W., 6th P.M., with the reservation to the United States of the coal and other minerals in the land, together with the right to prospect for, mine and remove the same, under the Act of December 29, 1916, (39 Stat., 862). The holder of a location, made either before or after the initiation of the homestead entries, has the right to use so much of the surface of the lands as may be needed in his mining operations provided the holder complies with the requirements of section 9 of the Act with respect to the protection of the crops and improvements of the surface owner. The issuance of the patents divested the United State of title to the lands, and in order for the holder of the claims to which you refer, to successfully assert title to the lands within the locations, the holder would have to establish, through court proceedings, that prior to the initiation of the homestead entries, the locations had been perfected by valid discoveries of oil shale or some other mineral subject to location, and would have to obtain a court decree that the patentees or successors were holding in trust for him, the title to the lands within the boundaries of the locations.

Patents issued on homestead entries with the reservation of the oil and gas under the Act of July 17, 1944, (38 Stat., 509), prevent the subsequent issuance by this office of patents upon a mining claim, located for any mineral upon the land. The rights of a mining claimant, if any, must be determined by the courts. Leases for oil and gas upon such patented lands may be issued under the Act of February 25, 1920, (41 Stat., 437). Patent No. 895390, issued February 6, 1923, for the

SW ¼ SE ¼, sec. 17; NW ¼ NE ¼, sec. 20, T. 6 S., R. 99 W., 6th P.M., with the reservation of the oil and gas under the Act of July 17, 1944.

Official Copy
Copy for General Land Office Files

[2076] The Phenol group of mining claims, including the numbers mentioned in your letter, were declared null and void by this office on August 26, 1931, as the result of Contest No. 12036. However, the decision of August 26 was based on a charge that the required annual assessment work had not been done on each, or any of the claims for the year ending July 1, 1929, and had not been resumed. With respect to certain other oil shale claims, on January 6, 1930, (Wilbur v. United States, 280 U.S. 306), and June 3, 1935, (Ickes v. Virginia-Colorado Development Corporation, 295 U.S. 639), the United States Supreme Court held in effect that the failure to do the assessment work could not be made the basis of a contest by the government, and that the failure did not work a forfeiture of the claims to the government, but only rendered them subject to loss through relocation by some other persons, if the work was not commenced or resumed before such relocation.

Very truly yours,

Fred W. Johnson
Commissioner.

CC: Reg.
3-6-zmb

* * * *

[2078]

PLAINTIFF'S EXHIBIT 209

1943043 "DL:MG"

File Copy
Surname:
BLM
Gilles
Wassem
Leo Huck
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Excep'd. Sol. Off.

United States Department of the Interior Office of the Secretary Washington Aug 29 1950

My dear Mr. Whatley: This has reference to your petition and brief, dated April 26, 1950, requesting a refund of the amount of $157.52 paid by you under protest in connection with grazing privileges granted to you for the 1948 grazing season in the Roan Creek Unit, Colorado Grazing District No. 7. You appear to own or control certain unpatented oil shale mining claims in the area, and the principal issue raised by you is whether as such owner you have the right to use the surface of these claims for grazing purposes. 2-139 Oil Shale

As you undoubtedly are aware, numerous owners and holders of such claims have leased them for many years for grazing purposes. This practice has seriously affected the proper and orderly administration of the grazing districts in western Colorado. The problem has been administratively considered by this Department on a number of occasions, and the legal implications thereof have also been carefully considered.

The mining claims are situated within the oil shale area in Colorado, and were located prior to the enactment of the Mineral Leasing Act of February 25, 1920 (41 Stat. 437, 30 U.S.C. sec. 181) which provides for the leasing of lands containing oil shale and other minerals. This Department has held in Freeman v. Summers 52 L.D. 201 (1927) that oil shale deposits constitute valuable mineral deposits under the mining laws.

In view of Wilbur v. Krushnic 280 U.S. 306 (1930) and Ickes v. Virginia Colorado Development Company 259 U.S. 639 (1935), the failure to perform assessment work does not render mining claims invalid but subjects them merely to loss through relocation. As oil shale locations may not be made since the enactment of the Min-

eral Leasing Act, there is therefore no actual obligation on the part of the locator to perform assessment work to prevent relocation.

It is the view of this Department that a mining locator acquires merely a possessory interest in his claim; that he may use so much of the surface as is reasonably necessary in the legitimate operation of mining and in furtherance thereof, and that he may not use the surface of his claim for purposes not related to mining, as for example, the grazing of livestock thereon. Of course there could be no objection to a mining locator grazing on his claim livestock used directly in his mining operations and solely for that purpose. +6.2 General +6-6 Colorado

[Stamps: 3 Interior Dept. Secretary's Mail Center Aug-8 1950 Received OLU; (Words illegible) LO 45 Aug 8 1950 Office of (words illegible); Interior Dept. Secretary's Mail Center Aug-9 1950 To Solicitor; Interior Dept. Aug 9-1950 Solicitor; From Solicitor Aug 9 1950 For Signature; Interior Dept. Secretary's Mail Center Aug 10 1950 Received Doty; 9 Interior Dept. Aug 10 1950 Secretary; 14 Assistant Aug 10 1950 Secretary]

Copy for the Secretary's Office

* * * *

[2080] You state that the Mineral Leasing Act, supra, and the Taylor Grazing Act (43 U.S.C. 315 et seq.) are subject to all valid and existing rights initiated prior to their passage. We do not here imply that the oil shale mining claims are invalid. We simply point out that in our opinion the claims may not be utilized for purposes foreign to mining. Until the claims ripen to patent, the land covered thereby is the property of the United States and, as stated in the Rizzinelli case, supra, subject to the locator's legitimate use for mining purposes, the Government continues to be the owner of the land and is interested in conserving its value."

We conclude, therefore, that lands covered by oil shale mining claims within an established grazing district are subject, until the issuance of patent, to administration

by this Department, and that license fees for the grazing use of the surface thereof may properly be levied by the Bureau of Land Management in accordance with the provisions of the Federal Range Code.

* * * *

You allude to the "directive" of January 3, 1946 approved by the Assistant Secretary. I assume you refer to the instruction to the grazing officials to include in all grazing permits and licenses affecting unpatented mining locations or claims a provision that the permittee or licensee will exercise due care not to damage or disturb mining improvements thereon. You request that it be "reconsidered and * * * either enforced or withdrawn and rescinded or a new directive issued which can and will be enforced against all alike without fear or favor * * *." This Department has consistently endeavored to enforce the provisions of this "directive" in all cases [2081] and against all persons equally. Since it is our position that the surface of unpatented mining claims are subject to administration for grazing purposes by this Department, there is no need for rescinding the "directive".

Sincerely yours,

(sgd) Dale E. Doty
Assistant Secretary of the Interior

Mr. Barney L. Whatley
DeBeque, Colorado

MGILLER:rpg
8-3-50

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* * * *

[2083]

PLAINTIFF'S EXHIBIT 210

March 30, 1951

My dear Mr. Whatley: First, permit me to express my regrets for the long delay in replying to your letter of October 9, 1950, in which you comment on Assistant Secretary Doty's letter to you of August 29 concerning the right of an owner of an unpatented mining claim to use the surface for the grazing of livestock.

* * * *

[2084] Accordingly, in all the circumstances and, at the same time, with a deep appreciation of the sincerity of your argument, I am compelled to affirm the position taken by Assistant Secretary Doty.

Sincerely yours,

(Sgd.) Oscar L. Chapman
Secretary of the Interior

Mr. Barney L. Whatley
DeBeque, Colorado

HPower:pl

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[2087]

PLAINTIFF'S EXHIBIT 211

* * * *

[2090] United States Department of the Interior Office of the Secretary Washington 25, D.C. Aug 29 1963 (Seal)

Dear Senator Anderson:

* * * *

[2092] During the period 1925 to 1931, in order to resolve problems of title ownership, more than 1,000 con-

tests were initiated by the Department against the validity of oil shale placer mining claims in Western Colorado. Probably some ninety percent of the complaints served in these contests alleged invalidity for failure to perform annual assessment work on the claims. The remaining ten percent alleged fraud, dummy locations, lack of discovery, abandonments, etc. Subsequently, the Supreme Court held that the charge of failure to perform assessment work could not be the basis for the Department to declare unpatented oil shale mining claims invalid. Wilbur v. Krushnic, 280 U.S. 306 (1930); Ickes v. Virginia-Colorado Development Corporation, 295 U.S. 639 (1935).

* * * *

[2093] Following the 1935 decision of the Supreme Court in the case of Ickes v. Development Corporation, the Department dismissed those contests which were based solely on the charge of lack of assessment work, and in the Shale Oil Company case of June 24, 1935 (55 I.D. 287), stated ". . . the decision of the Commissioner . . . in the instant case, must be held as without authority of law and void . . . . . the instructions of June 17, 1930, are hereby recalled and vacated. . . . other Departmental decisions in conflict with the decision are hereby overruled." However, vacating of this charge, of itself, created no presumption as to the validity of any oil shale claim. The principal issues then remaining were discovery of a valuable deposit of oil shales, fraud, dummy locations, and abandonment.

The files contained numerous letters, memoranda, and instructions showing that the position of the Department, as stated in the Shale Oil Company case, was unchanged until about 1958. During this time all prior adverse decisions, based on assessment work, were ignored, and many patents were issued without any question being raised as to the finality of the Shale Oil decision in cancelling all prior decisions which were based on assessment work alone. In the last decade, beginning in 1950,

a total of 92 mineral patents were issued embracing 92,000 acres of oil shale lands.

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[2096] Sincerely yours,

(sgd) John A. Carver, Jr.
Assistant Secretary of the Interior

Hon. Clinton P. Anderson
United States Senate
Washington 25, D. C.

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[2099]

PLAINTIFF'S EXHIBIT 212

Aug 20 1959 Air Mail Memorandum To: Associate Solicitor, Division of Public Lands From: Regional Solicitor Subject: Effect of decisions of the Department and of the Commissioner, General Land Office, declaring oil shale placer claims null and void based solely on the charge of failure to do assessment work File 1,606,652 11-4

• • • •

[2100] did the Department overrule, vacate and vitiate all of the previous final decisions of the Commissioner of the Land Office and the Department which declared oil shale claims null and void based solely on the charge of failure to perform assessment work, even though parties to the decisions declaring claims null and void failed to appeal judicially or administratively. In this connection we desire to refer to Departmental decisions Lillie M. Kelly (July 25, 1923, 49 L.D. 659), State of New Mexico, Robert M. Wilson, Lessee, v. Robert S. Shelton and John T. Williams (December 14, 1932, 54 I.D. 112), and Charles Perkins (On Rehearing) (October 30, 1923, 50 L.D. 172). All of those decisions tend to support the rule that final decisions of the Department or its sub-

ordinate offices shall be given the effect of res adjudicata, particularly where affected parties fail to appeal.

Notwithstanding the Supreme Court decision in Ickes v. Virginia-Colorado Development Corporation, supra, and the Departmental decision of The Shale Oil Company, supra, would it be improper for this office to advance the rule that persons named in final decisions of the General Land Office and of the Department who failed to exhaust administrative remedies or who failed to seek remedy in the courts lost their rights to claims administratively declared null and void on the basis of failure to perform assessment work?

Since the answer to this memorandum will have a bearing on the way we proceed in the pre-hearing conference in Contest 147 as well as proposed contests relating to many other oil shale placer claims, we will appreciate an answer by letter or teletype by August 27, 1959.

Bryan L. Kepford
For the Regional Solicitor
Denver Region

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[2103]

PLAINTIFF'S EXHIBIT 215

Dec-3 1959 Memorandum To: Regional Solicitor, Denver Region From: Associate Solicitor, Division of Public Lands Subject: Oil shale locations declared null and void solely for failure to perform the assessment work

* * * *

You raise the question whether under the doctrine of res judicata, those claimants who failed to appeal from the Commissioner's decisions or resort to the courts where a departmental decision was concerned, now are foreclosed from asserting any rights under their locations notwithstanding later Supreme Court decisions (Wilbur v. Krushnic, 280 U. S. 306 and Ickes v. Development

Corporation, 295 U. S. 639), holding that the Government was not concerned in a claim-holder's failure to do the assessment work and that it could not declare a forfeiture of a claim because of such failure.

In view of the Supreme Court decisions mentioned, the Department in its decision of June 24, 1935, in the Shale Oil Company case (55 I. D. 287) held that in that case the Commissioner's decision was without authority of law and void; recalled and vacated certain cited departmental decisions and the departmental instructions of June 17, 1930 (53 I. D. 131); and overruled "other departmental decisions in conflict with this decision." Thus in effect the decision of June 24, 1935, recalled and vacated all departmental decisions declaring oil shale placer claims null and void solely for failure of the claim owner to do the assessment work, thus leaving the claims as if they never had been contested.

* * * *

[2104]

C. R. Bradshaw
Associate Solicitor
Division of Public Lands

Copy to: Secretary's Office

* * * *

[2105]

PLAINTIFF'S EXHIBIT 216

In Reply Refer To: 5.22a-2 C-028751

United States Department of the Interior Bureau of Land Management Colorado State Office 339 New Custom House P. O. Box 1018 Denver 1, Colorado August 3, 1960 (Seal)

3/15/61 4/15/61 8/8/61

Memorandum To: Land Office Manager From: Lands and Minerals Officer Subject: C-028751, Maude B. Farnum, et al Application for Patent SW, NW, NE, and SE Oil Shale Placer Mining Claims

The mineral report and a relinquishment filed by the applicants are transmitted for further action by your office. The second copy of the relinquishment will be recorded in the office of the Clerk and Recorder, Garfield County, Colorado.

The relinquishment should be accepted and the tract relinquished should be excluded from patent. This tract is described as the E ½ E ½ NE ¼, sec. 27, T. 7 S., R. 98 W., 6th P.M., being part of the Northeast Placer Mining Claim.

All else being regular, the Northwest, Southwest and Southeast Placer Mining Claims and that portion of the Northeast Placer Mining Claim not relinquished should proceed to patent.

J. Elliott Hall
Lands and Minerals Officer

Enclosures

To

(Words
illegible)

[2106] PLAINTIFF'S EXHIBIT 217

Sep 18 1961 Memorandum To: Associate Solicitor, Public Lands From: Regional Solicitor Subject: Oil shale locations declared null and void solely for failure to perform assessment work.

Reference is made to our memorandum of July 6, 1961, subject as above.

As we have indicated to you orally in recent telephone conversations, the State Director, Bureau of Land Management, Denver, is anxious to file complaints or amended complaints in several oil shale contests. We are aware that one of these contests involves directly the question which is discussed in the July 6, 1961 memorandum. A member of the staff of this office will participate in a discussion of the possible filing of this contest today. At this time we will request the State Director to withhold action on the filing of this contest for a period of one week.

It would be appreciated if you could find it possible to answer our memorandum of July 6 within this period so that we could appropriately advise the State Director.

Bryan L. Kepford
For the Regional Solicitor
Denver Region

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* * * *

[2112]

PLAINTIFF'S EXHIBIT 218

Copy Washington DC 9-22-61 Regl Solicitor USDI Denver Colo

(Word illegible) of July 6 and September 16 re oil shale locations declared void solely for failure to do assessment work. You are authorized to advise the Colorado State Director to dismiss pending patent applications on this ground and on the legal basis outlined in your July 6 memorandum. Care should be exercised though to insure that the record in the old contests declaring the claims null and void disclose that they were properly conducted and terminated under the rules of practice so that the State Director's action may be reasonably free from successful challenge on the grounds that they lacked due process because of procedural defects. Memorandum follows. (In reply refer to: G-61-2043.10A.)

T J Cavanaugh Assoc Solicitor Div of Public Lands

[2113]

PLAINTIFF'S EXHIBIT 219

United States Department of the Interior Office of the Solicitor Denver Regional Office Room 21, Building 53 Denver Federal Center Denver 25, Colorado Sep 26 1961

Received	Mailed & Date
State Dir	
1 I & M	
R & R	
2 IO	
Eng.	
Action	
Comments	
Filing	

Memorandum To: State Director, Bureau of Land Management, Denver, Colorado State Director, Bureau of Land Management, Cheyenne, Wyoming From: Regional Solicitor Subject: Oil shale —Effect of old decisions declaring claims null and void for failure to do assessment work

Enclosed are copies of our memorandum of July 6, 1961, to the Associate Solicitor, Division of Public Lands, and of the teletype from the Associate Solicitor in response thereto dated September 22, 1961.

You will note that the Associate Solicitor has authorized us to advise the Colorado State Director to dismiss pending patent applications on the basis of the subject decisions. The effect of this is that in each instance where a patent application is filed on an oil shale location, if in reviewing the file the Land Office determines that the claims were subject to contest on a charge of failure to do assessment work, that proper service was had in said contest, and that a decision was entered in said contest declaring the claims null and void, the Land Office in these circumstances may issue a decision denying the patent application on the basis of the old contest decision. This procedure should avoid a multitude of oil shale contests.

Bryan L. Kepford
For the Regional Solicitor
Denver Region

Enclosure

* * * *

Clerk's Note: Plaintiff's Exhibits No. 225 - Letter to McEniry from Commissioner 1/28/18; No. 226 - Letter to Attorney General from First Asst Secy 2/2/18; No. 227 - Letter to Herwick from Lenenberger 10/19/18; No. 228 - Deposition of Herwick 10/22/18 - appear in separate exhibit book

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* * * *

[2140]

PLAINTIFF'S EXHIBIT 229

C. F. Leuenberger, Special Agent, GLO. C. L. Duer, Mineral Examiner,GLO. Favorable report, Oyler Oil Shale Placers Nos.1 to 4 incl. Glenwood Springs L.D. 10-621582 "FS" SHM.

22192 315-25 Postoffice Bldg. Denver, Colorado. November 12, 1918

Honorable Commissioner, General Land Office, Washington, D.C.

Sir:- By your letter of January 28, 1918, above file, you order investigation regarding operations of certain parties upon lands within the limits of the Naval Oil Shale Reserve No.1,Colorado, created by Executive Order December 6, 1916, and embracing lands in Townships 5 and 6 South, Ranges 94 and 95 West, 6th P.M. Glenwood Springs Land District.

With your letter you inclose copy of a letter dated December 26, 1917, written by Mr. H. F. May, Special Assistant to the Attorney General, with offices at San Francisco. Mr. May's letter calls attention to the fact that Messrs. Reed and Doyle had made certain [2141] placer locations on oil shale within this Naval Oil Shale Reserve. With your letter you also transmit copy of promulgating order of withdrawal dated December 6, 1916, Naval Oil Shale Reserve No.1, Colorado.

As a result of our investigation just completed, we find in this Naval Reserve the following locations:

22190 Lignum Vitae Oil Shale Placer No. 6, by Joseph Bellis et al,

Oyler Oil Shale Placers 1 to 4 inclusive, by J. L. Herwick, et al.,

22193 La Paz Oil Shale Placers 1 to 14 inclusive, by Shoup, Doyle, et al.,

22194 Sheridan Oil Shale Placers 1 to 21 inclusive, by Verner Z. Reed, James Doyle, et al.,

Homestead Entry No.011121, by James A. Neilson;

Squatter's claim,by one Fred Hurlburt.

Report will be submitted on each of these claims or group of claims separately, and we will now proceed to make report on:

Oyler Oil Shale Placers 1 to 4 Inclusive. 44627 86 [2142] The descriptions of these Oyler Oil Shale Placers numbered 1 to 4 inclusive, are as follows:

No. 1: NE ¼ Section 10,
No. 2: W ½ NW ¼, N ½ SW ¼, Section 11;
No. 3: E ½ NW ¼, W ½ NE ¼, Section 11;
No. 4: E ½ NE ¼ Section 11, W ½ NW ¼ Section 12, All in T.6 S., R.95 W., 6th P.M. Parachute Mining District, Garfield County, Colorado.

The original locations were made September 25, 1916, and recorded on October 3, 1916, in Book 77, pages 311 and 312. The original locators were: Ida O. Herwick, Guy Herwick, Oren Herwick, William Herwick, Jennie Herwick, Fred Herwick, James Doyle and J. L. Herwick. The Herwicks are members of the family of which J. L. Herwick is the head. James Doyle is a mining man, heavily interested om oil shales and a friend and former associate of J. L. Herwick. Mr. Herwick lives at Grand Valley and is a highly respected citizen. Much of the development work which has been done on the Sheridan and La Paz placers inside the Naval Oil Shale Reserve has been done under contract by J. L. Herwick and his sons. We questioned Mr. Herwick relative to the [2143] matter of discovery prior to location and he said an opening was made on each of the four Oyler placers, samples taken and the oil content of the shale proven by the application of heat.

In Book 103, page 227 of the Garfield County records, Mr. J. L. Herwick makes affidavit of labor and money

expended on each of the four Oyler claims amounting to $100.00 per claim for the year 1917.

We rode over the ground on horseback and found an open cut on each one of the Oyler claims 15x10 ft., 10 ft. face. We had a sample of shale from each one of these cuts and by the application of heat determined that they were oil bearing. These placer claims are situated from one quarter of a mile to one mile from the shale outcrop but the surface is cut by numerous gulches and small streams which expose the shale beds, and it is along these small creeks that the discovery and assessment work on these claims has been done. If mining of oil shale for shipment were undertaken, these open cuts would be good points of beginning and therefore, may be consistently considered as development work. As no reduction plants have as yet been erected in the vicinity of these Oyler placers, [2144] no shale has as yet been shipped for commercial purposes.

On November 9, 1917, a seven-eighths (7/8) interest in Oyler Oil Shale Placers numbered 1 to 4 inclusive, was transferred by mining deed to J. L. Herwick by the other locators; the consideration named in the records of Garfield County, in Book 5, page 220, is stated as $5.00 &c. We questioned Mr. J. L. Herwick concerning this transfer and he explained that the locations were originally made in good faith but that the performance of the assessment work fell to him, altho he was assisted by members of his family who were also some of the original locators. We refer to his affidavit herewith in which he also states that if he had not pushed the work, he is of the opinion that it would not have been done. He conceived the idea that in case of death it would be better to have a legal title in one head, and as his family would still have their legal interests in his estate, he got them to quitclaim to him.

As to locator James Doyle, he was the only locator outside of the Herwick family. Mr. Herwick states that Doyle seemed to have about all he could attend to in looking after the development work of the Sheridan and [2145] La Paz groups of oil shale claims, in which Doyle is also interested, and failed to assist him with labor or

money in doing the assessment work on the Oyler placers, and apparently not wanting to advertise Doyle out of the Oyler claims, he approached him to ascertain if he desired to hold his interest by doing his share of the assessment work or if he preferred to deed his one-eighth (⅛) interest to Mr. Herwick. Mr. Doyle decided he would make quit claim deed to Mr. Herwick and severed his connection with the Oyler placers. In an interview with Mr. Doyle relative to the Oyler placers, he made statements which corroborated those of Mr. Herwick.

We believe the foregoing statements cover all the points of inquiry contained in your letter of January 28, 1918. The preliminary requirements regarding discovery, location, notices, as well as subsequent assessment work, have been complied with. Of course, discovery of oil in these shales is not the same as would be the discovery of free oil for the reason that the oil is obtained by a process of distillation which consists of the application of heat and a condensation of the oil vapors into liquid oil by conducting the pipes leading from the retort thru [2146] cold water. Nevertheless, it must be admitted that the chief value of these shales is in the oil that they can be made to produce. In fact, as appears from your letter of June 29, 1916 (621582 "N" JYH) addressed to the Register and Receiver, U. S. Land Office, Glenwood Springs. Colorado, you advise that the Director of the U. S. Geological Survey, by his letter of May 23, 1916, classified the lands embraced in this group of placers, together with other lands, as valuable for petroleum and nitrogen. According to the Act of Congress approved February 11, 1897 (29 L.D.526):

"Any person authorized to enter lands under the mining laws of the United States may enter and obtain patent to lands containing petroleum or other mineral oils, and chiefly valuable therefor, under the provisions of the laws relating to placer mineral claims."

The Naval Oil Shale Reserve No.1, Colorado No.1, was created by Executive Order dated December 6, 1916, and therefore is subsequent to the date of discovery and location of this particular group of oil shale placers. Therefore, the withdrawal of this reserve would not be a bar

to the further development work of these claims if prosecuted in good faith.

We were informed by a representative of the U. S. Geological Survey that it was well known that bona fide [2147] oil shale placer locations existed within the confines of this shale reserve at the time it was created but that it was placed wherever it least interfered with bona fide locations. While at Grand Valley we witnessed the retorting of oil from shales by Prof. Dean E. Winchester of the U. S. Geological Survey. These oil shale deposits occur in horizontal strata, and in Bulletin 691-B, U.S. G.S. on page 52, Mr. Winchester gives a table showing a section of the oil shale bearing formation at the forks of Parachute Creek, 10 miles north of Grand Valley, Colorado, in about Section 36, T.5 S., R.96 W. Said table is as follows:

		Ft.	In.
Shale (estimated average 15 gallons)		125	0
Shale (" " 30 ")		75	0
Shale,rich,hard (sample 193, 5 feet near middle of bed; 42 gallons	—	25	0
Shale (average nearly as good as sample 192; probably 30 gallons	—	30	0
Covered and lean shale	—	86	0
Shale (estimated 30 gallons)	—	45	0
Shale (as good or better than sample 192)	—	4	6
Shale,sandy, lean	—	6	0
Shale (estimated 25 gallons)	—	4	0
Shale (nearly as good as sample 192)	—	5	0
Shale, medium	—	15	0
Shale, hard,blue (like sample 192)	—	3	0
Shale, medium	—	9	0
Shale,hard,blue (like sample 192)	—	2	0
Shale,medium	—	9	0
Shale,hard,blue (sample 192) 36 gal.)	—	2	6

[2148]

Interval, probably 40 percent shale in beds 3 feet or more thick which will test 25 gallons or more to ton	—	175	0
Shale (like sample 191)	—	2	0
Shale, medium rich	—	5	6

		Ft.	In.
Shale, (like sample 191)	—	3	0
Shale, medium rich	—	11	0
Shale, (like sample 191)	—	2	0
Shale, lean	—	6	6
Shale,hard,blue (sample 191; 19 gal)	—	5	4
Shale,sandy,yellow	—	5	0
Shale, (estimated25 gallons)	—	18	0
Shale,slightly less rich than 190	—	12	0
Shale,hard (sample 190; 18 gallons)	—	6	4
Sandstone	—	—	3
		847	11

Said Section 36 corners with Section 6, T.6 S., R.95 W., which is one of the most westerly sections within the Naval Reserve. Considering the tabulation given, in connection with the outcrops along the eastern boundary lines of the Reserve, it is comparatively safe to assume that the formation underneath this group of placers is approximately like unto that shown in the tabulation.

Mr. Winchester, who is now, and has for years been making experimental tests of the oil shales of Colorado, [2149] Utah and Wyoming, in Bulletin 641-F, U.S.G.S., page 153, gives the results of his tests of shale samples taken from seven different seams outcropping on the east side of this Naval Reserve; the table referred to is quoted as follows:

Location Sec.Tp.Rg.	Thick-ness	Oil Gal. per ton	Gas (Cu.ft) per short ton	Ammonium sulphate
6 - 6- 94	10′ 0″	40.6	1916	4.3 lbs.
6 - 6- 94	4′ 3″	28.	4294	7.3 "
22- 6- 95	0′ 8″	24.5	1198	4.4 "
22- 6- 95	0′ 8″	35	3500	8.7 "
22- 6- 95	8′ 0″	20.7	—	—
22- 6- 95	13′ 0″	15.4	1443	3.2
22- 6- 95	15′ 0″	11.2	1198	4.0

The oil in the seams tested, runs from about 11 to 40 gallons per ton of shale besides the free gas and ammonium sulphate.

From our investigation we are of the opinion that the Oyler placers are bona fide locations and that the requirements of the mining laws have been met up to the present time, and we would recommend that no adverse action be taken regarding these claims but that when application is filed for patent, a further examination be made to determine whether or nor the requirements of the mining laws have been fulfilled.

[2150] The location of these claims is shown on the map of Naval Oil Shale Reserve No.1, Colorado, which accompanies our report on the La Pez group of oil shale placer claims.

The affidavit of J. L. Herwick is attached hereto.

Very respectfully,

Special Agent, G.L.O.
Mineral Examiner, G.L.O.

(Trans.11/12/18) MT

Clerk's Note: Plaintiff's Exhibits No. 230 - Letter to Commissioner from Charles Duer 11/7/18; No. 231 - Letter to Commissioner from Charles Duer 11/9/18; No. 232 - Letter to Commissioner from Chief, Denver Field Div. 11/29/18 - appear in separate exhibit book.

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* * * *

[2206]

PLAINTIFF'S EXHIBIT 236

Department of the Interior Washington 1186985
Address Only The Secretary of the Interior July 17, 1925.

Referred To
Mr/Beach and Capt Harr
For: Recommendation

P.R.C.	Action
Reply	Conference
Report	Information

The Commissioner of the General Land Office. L & Capt Harr [Stamps: Received Jul 18 1925 G.L.O.; Received Jul 18 1925 G.L.O.]

Dear Mr. Commissioner: I inclose herewith copy of letter from the Acting Secretary of the Navy, wherein he requests that this Department undertake an investigation of claims in Naval Oil Shale Reserves 1 and 3, Colorado, and Naval Oil Shale Reserve No. 2, Utah, in order to clear up and dispose of invalid claims and definitely fix the status of lands within the reserves.

The Department is of the opinion that the public interest warrants and requires such procedure, and you will take such steps, through your Field Service, as may be necessary to initiate and carry through such an investigation, with any necessary incidental proceedings.

The Navy will no doubt be glad to cooperate in every way with this investigation and should be advised, through the Department, of any action taken affecting the reserves.

Sincerely yours,

E. C. Finney
Acting Secretary

Inclosure 1794

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* * * *

[2213]

PLAINTIFF'S EXHIBIT 242

Department of the Interior General Land Office 323 Post Office Bldg., P. O. Box 509, Denver, Colorado, February 28, 1929. P-11

Denver Land District Oyler Oil Shale Placer Claims Nos. 1 to 4, incl., Adverse report Warren R Sholes Asst Mining Engineer

The Commissioner, General Land Office, Washington, D. C. Approved Ralph S. Kelley Chief Field Division 3-4-27

Sir: On April 27, 1927 I was assigned for field investigation and report the following oil shale placer claims in Garfield County, Colorado:

Oyler Nos. 1 to 4, inclusive, T. 6 S., R. 95 W., 6th P. M.

* * * *

[2248] Officer,Benj. F. L. Heron, interviewed Charles S. Cook at Santa Monica, California, and secured an affidavit from him. This affidavit is attached as Exhibit H. In it Mr. Cook gives a general statement regarding his work, supports the statement of Mr. Hansen as to road and trail indicating that it was all done in the 1920, and that since that time no other work or trail work has been done for the claims; that in May 1922 and two other years, which I assume, are 1923 and 1925, he had charge of assessment work above the escarpment on the claims; that he put in wedge-shaped holes in a number of cases, digging double holes on one claim for the benefit of two. He made no attempt to identify the holes dug. He gave the names of the men who assisted him, as far as he could remember, and the wages paid.

His statement confirms the opinion that the road and trail are applicable to the assessment year 1920 only, and that assessment holes were the only form of work done for the years following.

The following table gives a summary of this assessment work as near as could be estimated:

Confidential Not for Public Inspection

[2249]

Oyler No. 1

Assessment yr. ending		
7/1/21	Trail and road	$ 600.40
7/1/22	Probably open cut No. 11	52.80
7/1/23	Open cuts 12 and 13	346.25
7/1/24	----------	—
7/1/25	Open cut No. 14	—
7/1/26	One-fourth trenches on Oyler No. 2	—
7/1/27	Open cut 11 A	100.00
7/1/28	Open cut 11 B	100.00
	Total —	$1199.45

Oyler No. 2

7/1/21	Trail and road	600.40
7/1/22		—
7/1/23	Open cut 5 probably	64.20
7/1/24		—
7/1/25		—
7/1/26	One-fourth trench system	40.00
7/1/27	Open cut 5 A	100.00
7/1/28	Open cut 5 B	100.00
	Total —	$904.60

Oyler No. 3

7/1/21	Trail and road	$ 600.40
7/1/22	Open cut 9 probably	183.80
7/1/23	Open cut 1 and one-half open cut 3	319.58
7/1/24	One-half open cut 7 and one-half open cut 3	186.27
7/1/25	Open cut 4 and open cut 6	370.05
7/1/26	One-fourth trenches on Oyler No. 2	—
7/1/26	One-half open cut 7	100.00
7/1/28	One-half open cut 1 A	—
	Total —	$1760.10

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[2250]

Oyler No. 4

Assessment yr. ending		
7/1/21	Trail and road	$ 600.40
7/1/22	Open cut 10 probably	89.00
7/1/23	One-half open cut 20	82.30
7/1/24	One/half open cut 17. Open cut 19	224.20
7/1/25	One-half open cut 18; ½ open cut 17	144.40
7/1/26	One-fourth trenches on Oyler No. 2	—
7/1/27	One-half open cut 20	82.30
7/1/28	Open cut 18 A	100.00
	Total —	$1322.60

The totals shown represent the total value of work applicable to each claim. It does not take into account the fact that certain cuts may or may not have been dug for more than one claim inasmuch as this information is lacking. In Cook's affidavit, Exhibit H, he states that during the years he was in charge double holes were dug for the benefit of two claims, but as no identification of

these holes was made with the exception of the year ending July 1, 1925, the holes not otherwise identified must be credited to him where they appear to fit. This has been done as is shown in the preceding tables.

In spite of the above identifications and statements I find assessment work lacking for at least one year on all four claims. On Oyler No. 1 I could find no open cut [2251] or other improvement for the assessment year ending July 1, 1924 or July 1, 1925, and the work for the year ending July 1, 1926 being a trench system on Oyler No. 2, it is of no value toward the development of Oyler No. 1 and even if so, its value of $44 credited to each claim is insufficient.

The assessment work for Oyler No. 2 is lacking for the years ending July 1, 1922, 1924 and 1925, and insufficient for the year ending July 1, 1926.

Oyler No. 3 assessment work is lacking for the years ending July 1, 1926 and 1928, being in the former case the portion of the trench system on Oyler No. 2, and in the latter open cut No. 1 A which, being entirely in earth and gravel, is of no value.

Oyler No. 4 appears to have sufficient work done for every year except the year ending July 1, 1926, which is the trench system on No. 2, above referred to, and is of no value toward the development of this claim.

It might be noted, however, that group work was done. On Oyler No. 3 there were several open cuts of sufficient size for two or three assessment years. These open cuts, however, are of no value toward the development.

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[2252]

* * * *

Recommendations

I recommend that adverse action be taken against each of these claims, charging that the assessment work has not been done each and every year since the date of the leasing act.

The Index Shale Oil Company is a Colorado corporation with offices in the Denham Building, Denver. The

President is Mr. C. W. Church and C. J. Pfusch is Secretary and Treasurer. Their addresses are the same as that of the company. The affairs of the Index Shale Oil Company are now in the hands of the Receiver, same being C. J. Pfusch of the Denham Building, Denver.

Very respectfully,

Warren R. Scholes
Asst. Mining Engineer, G.L.O.

WRS/LP

NK-1-24
LP 25-40

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* * * *

Clerk's Note: Plaintiff's Exhibits No. 244 - Contest No. 12039 6/28/29 and No. 245 - Letter to Index Shale Oil Co. 7/22/31 - appear in separate exhibit book.

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* * * *

[2264]

PLAINTIFF'S EXHIBIT 248

United States Department of the Interior Bureau of Mines Washington 25, D.C. October 11, 1948 LHD [Stamp]

Office of the Director MB 74 49439

Memorandum To: Marion Clawson, Director, Bureau of Land Management. From: Director, Bureau of Mines. Subject: Rights of private parties in lands included in Oil Shale Reserve #1, Rifle, Colorado. See 621583 See Naval Oil Shale Restoration No. 1 Colorado-621583

The Bureau of Mines has been advised that the water works and drill hole (SW "NW" sec. 12) "S" of our Oil Shale Project, Rifle, Colorado, are located on land subject

to certain unpatented placer mining claims, identified as Oyler Nos. 1-4 inclusive, which are said to have been located on September 25, 1916, and filed for record on October 3, 1916. These claims appear to be in sections 10, 11 and 12, T.6S, R 95W, within the Naval Oil Shale Reserve No. 1, established by an unnumbered Presidential Order, dated December 6, 1916, some two months after the asserted location and filing of the subject claims.

We have been informed by one C. R. Jones, Park Lane Hotel, Denver, Colorado, that a company in which he has a one-third interest is being formed to take over and exploit the holdings of the Index Shale Oil Mining Company, that the Index Company holdings include the subject claims and that the new company intends to patent these claims as soon as it has secured the titles. It is Mr. Jones' position that even though no assessment work has been done on the claims, no other party, including the Government, can locate and file an adverse claim by reason of the withdrawal from entry December 6, 1916, and that any development work done by the Government in the meantime can be applied by the claimant for the purpose of patenting the claims.

The Bureau, of course, is not in a position to evaluate the right of the parties in these claims or of Mr. Jones' position with respect thereto. We do believe, however, that if the subject claims are patented the Department may be put to considerable trouble and expense in carrying out the oil shale program at Rifle, and that every reasonable and proper step should be taken to determine the matter favorably to the Government's interest.

* * * *

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* * * *

Clerk's Note: Plaintiff's Exhibit No. 250 - Mineral Entry - appears in separate exhibit book.

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* * * *

[2269]

PLAINTIFF'S EXHIBIT 251

Colorado State Office 357 New Custom House P. O. Box 1018, Denver 1, Colorado 1957 Mar 7 PM 1 04
March 6, 1957

Received Colorado Land Office Denver, Colorado

Memorandum To: Land Office Manager From: Lands and Minerals Officer Subject: C-012327, Pacific Oil Co., Oyler Nos. 1, 2, 3, and 4 Placer Mining Claims - Mineral Entry

The application for patent of the Pacific Oil Company has been investigated and was found to be deficient in several respects, as follows:

1. The claims as now described do not appear to conform to the areas covered by the original locations.
2. Locations of improvements and discoveries on three of the claims, as given in the patent application, could not be checked in the field.

It is recommended that the applicant be allowed thirty days to submit further showings as to these items. If applicant fails to comply accordingly, the application will be rejected.

It is suggested your decision read somewhat as follows:

You are required to show (1) that the land you now claim is the same as was originally located and staked; (2) that the points of discovery and the various improvements listed, as described in the application, are accurately shown by actual bearing and distance from the control points given.

L.O. Mgr.
Status
Accounts
Misc.
Olson Adjuc.
Info.
For Action
No Action
For filing
In dupl.

For the State Supervisor

J. Elliott Hall
Lands Minerals Officer

BLM o58

[2270]

PLAINTIFF'S EXHIBIT 252

(Stamp) United States Department of the Interior Bureau of Mines Region III 1955 Oct 16 AM 10 00 224 New Custom House Denver 2, Colorado October 12, 1959 Co/2327

Office of Regional Director Reply made by L & M 10-15-59 CSI See L & M claims file,

P 15 7077 Bureau of Land Management
1 State Supervisor L C
3 Land Office Dill
2 Lands & Minerals C O
(words illegible)
For Action LM-LO
For Filing LO

Mr. Lowell M. Puckett State Supervisor Colorado State Office Bureau of Land Management 339 New Customhouse Building Denver 2, Colorado

Dear Mr. Puckett: The Bureau of Mines has tentative plans for declaring the Oil Shale Demonstration Plant at Rifle surplus. I have made the statement that the Oyler claims are being brought to patent, and our Washington office has requested me to secure full information concerning the patent proceedings of this claim, including:

1. Its designation in the records of the Bureau of Land Management,
2. Its present status,
3. The steps that have been taken and are being taken to the issuance of a patent,
4. Any other available information concerning the patent proceedings.

For your information, the Oyler claim is directly north of the Bureau of Mines Oil Shale Mine workings.

I will appreciate your furnishing me with the available information requested.

Route		Init'l.	Date
1	Manager (illegible) Mgr. Sec'y		10/11
2	Minerals Lands Expediter Info. Ofcr. Accounts Docket	LN	10/16

Sincerely yours,

J. H. East, Jr.
Regional Director
Region III

BLM 072

Necs. Action 2
Info. Dist.
File Return to

---

* * * *

[2272]

PLAINTIFF'S EXHIBIT 254

In reply refer to: 5.226-2 C-012327 Date: P-17

United States Department of the Interior Bureau of Land Management Colorado State Office 339 New Custom House P. O. Box 1018 Denver 1, Colorado

(Words illegible) PM 2 59 0 Speedmessage Feb 13 1961

To: Director - 5.04a From: State Supervisor, Colorado Subject: Colorado 012327, Pacific Oil Company Oyler Placer Mining Claim Nos. 1 to 4

* * * *

We have investigated the application as to abandonment, dummy locators, and lack of good faith, and find that there is no basis for rejecting the application on any of these grounds.

* * * *

[2273]

PLAINTIFF'S EXHIBIT 255

Mineral Report
Mineral Patent Application
of
Pacific Oil Company
for
Oyler Nos. 1, 2, 3, and 4
Oil Shale Placer Mining Claims
(Title)

Lands Involved
Garfield County, Colorado
Sixth Principal Meridian
T. 6 S., R. 95 W.

April 12, 1961
(Date)

cc: Director, USGS
Washington, D.C.

By W. R. Sholes
Valuation Engineer

Approved
J. Elliott Hall
Lands and Minerals Officer

For Administrative Use Only BLM 085

[2274] Summary and Conclusions:

Previous investigations as reported have shown that all aspects concerning the validity of the subject claims and the patent requirements have been complied with except for the matter of mineral survey and the sufficiency of the work done.

The investigation showed additional work had been done on and for the benefit of Oyler Nos. 1, 2, and 4 sufficient to comply with the requirements of $500 value per claim.

Recommendations:

It is accordingly recommended that the claims be clear-listed for patent.

• • • •

[2277]

PLAINTIFF'S EXHIBIT 256

Colorado State Office 331 New Custom House P.O. Box 1018 Denver 1, Colorado Apr 21 1961

Memorandum To: Regional Director, Region 3 Bureau of Mines From: State Supervisor, Colorado Subject: C-012327, Pacific Oil Company Oyler Placer Mining Claims Status of Patent Proceedings

By your letter of October 12, 1959, you asked us as to the status of the patent proceedings for the Oyler Nos. 1 to 4 Oil Shale Placer Mining Claims and by our reply of October 15, 1959, we advised you as to the status of the claims as of that date.

It appears the applicant, Pacific Oil Company, has met, or will meet in the near future, all requirements for acquiring title to the claims.

(Sgd.) Lowell M. Puckett
State Supervisor

cc: Area Adm., Area 3, 5.20c-2
L&M case file
" reading
SO "
McIntosh/mb

• • • •

[2673-A]

PLAINTIFF'S EXHIBIT 264

[DEFENDANT'S EXHIBIT B]
C-012327

Mineral Entry

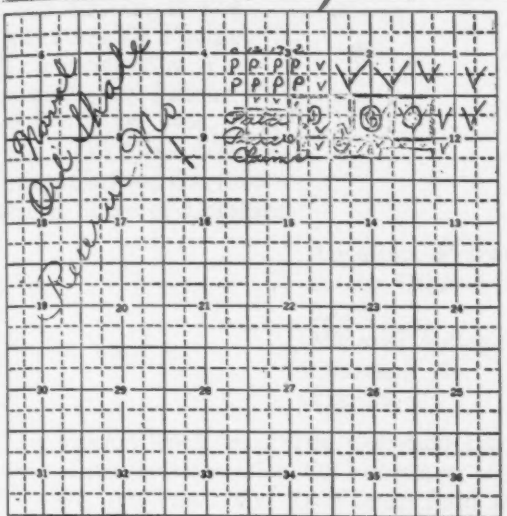
UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

BRANCH OF LAND STATUS: Please furnish status of lands described in Case No. C-012327 or on the following described lands in Sections 10 - 11 - 12 - Ogden No 1-2-3-4 - Placer Mining Claims

Twp. 6 South Range 95 West Meridian 6th P. M. State

Other data required

Name of requester Pacific Oil Branch Date



LEGEND

- Outline of area on which status is required
- ✓ Public land in Federal ownership
- Patented land (no minerals reserved)
- Patented land (S. R. Act 12/29/14)
- P Patented land (Act 7/17/14)
- School lands
- Indian allotments

Does posting and survey agree with the lands as described? Yes

Conflicts None

Section 10 Ogden No 1 - Lots 1, 2, 3, 4, E½NE¼ = 320.33 / 160.00 Acres

Section 11 Ogden No 2: N½NW¼ = 80.00, N½SW¼ = 80.00 / 160.00 Acres

Section 11 Ogden No 3: E½NW¼ = 80.00, N½NE¼ = 80.00 / 160.00 Acres

Section 11 Ogden No 4: E½NE¼ = 80.00 / 160.00 Acres
Section 12 Ogden No 1: W½NW¼ = 80.00

Withdrawn by Exc. Order 4-13-30 from lease or other disposal for Naval Oil Shale Reserve No 1 Colo. 105 30/100 out of Sec 31.

Naval Oil Shale Reserve No 1
Colorado No 1 - Executive Order of Dec 6 1916

6/6.65 Acres

Rights-of-way None

Posted in T. B. Vol. No. ____ Page No. ____ Status furnished 10/12/55 Clerk Carl 2782
File with case. Status Clerk will be responsible for its correctness.

McClaine 3-21-62 Recorded

[3021] Secretary of the Interior U. S. Department of the Interior Washington 25, D. C. Director, Bureau of Land Management U. S. Department of the Interior Washington 25, D. C. Colorado Land Office Bureau of Land Management U. S. Department of the Interior Denver, Colorado.

A-29560 Interior Dept. May 31 1963 Solicitor; U. S. Dept. of Interior Received May 31 9 05 AM '63 Immediate Office of the Secretary

In The Matter Of The
Application Of Pacific
Oil Company For A
United States Patent
For The Oyler Nos. 1, 2,
3 and 4 Oil Shale Placer
Mining Claims, Garfield
County, State of Colorado

Appellate Proceeding A-29560
In the Colorado Land Office,
5.22b
Mineral Entry
Colorado No.
012327

Motion To Vacate The Colorado Land Office Manager's Decision Of February 16, 1962, Or, Alternatively, To Vacate Said Decision And Remand For Full Hearing, After Notice Of Matters Of Fact and Law Relied Upon By The Manager and Asserted Against The Applicant

Preliminary Statement

It will be noted that this Motion is directed to the Secretary of the Interior, the Director of the Bureau of Land Management and the Colorado Land Office, Bureau of Land Management. This appeal from the Manager's Decision was directed the Director of the Bureau of Land Management under the number 5.22 b, Mineral Entry Colorado 012327.

We have been unofficially informed that on or about May 8, 1962, the Secretary, in the exercise of his supervisory power, assumed jurisdiction of this appeal and the other appeals from the February 16, 1962, patent rejections and will render Decisions on all of these appeals without an intervening Director's Decision. We have also been informed that all of these appeals have been consolidated in the Secretary's office and that they have been assigned Appellate Proceeding No. A-29560.

Accordingly, we have captioned this case in the above indicated Appellate Proceeding number, but, to avoid any question as to its being filed in the right office, we are filing it with the Secretary, with the Director and with the Colorado Land Office.

Motion

Pacific Oil Company, applicant in the above-listed mineral patent application proceeding, by its undersigned counsel, does hereby move, petition and request (1) that the Decision of the Manager of the Colorado Land Office of February 16, 1962, be vacated or, alternatively (2) that it be vacated and the matters covered thereby be ordered promptly set for a full hearing, after notice of matters of fact and law asserted against applicant, in compliance with the due process clause of the Fifth Amendment to the United States Constitution, the provisions of the Administrative Procedure Act, 5 USC §§ 1001 through 1011, and in particular §§ 1004, 1005, 1006 and 1010, and with the applicable published regulations of the Department of the Interior, for the reasons which follow: BLM 097

[3023] 1. In support of the first motion and for the reasons heretofore stated in appellant's "Statement of Reasons for Appeal" and Supporting Briefs, it is respectfully submitted that the Manager's Decision should be vacated because it is not supported in law or fact by the statements of fact and law therein set forth upon which the patent application was rejected.

2. If the first motion shall be denied, then, in support of the alternative motion, the following reasons are urged:

(a) The Decision of the Manager was rendered without any compliance with the above referred to provisions of the Administrative Procedure Act, without any contest being instituted by the government based upon the grounds set forth in said patent rejection decision or otherwise and without any hearing afforded the patent application to refute the grounds of any such contest as required by the regulations, such as 43 C.F.R., § § 185.87 and 221.51-221.77. To reject the patent application, as was done by the Manager, without any hearing afforded the patent applicant as required by the regulations and by the Administrative Procedure Act deprives the patent applicant of its property without due process of law in violation of the Fifth Amendment to the Constitution of the United States. BLM 096

[3024] (b) By this reference there is hereby incorporated herein the applicant's "Statement of Reasons for Appeal", together with the Supporting Brief filed therewith, which is incorporated therein by reference. For the various additional reasons stated therein, compliance with the Administrative Procedure Act and the applicable regulations of the Department of the Interior is required to avoid the taking of the applicant's property without due process of law in violation of the Fifth Amendment to the Constitution of the United States.

(c) At the requested hearing attacking the validity of the applicant's placer mining claims upon the grounds stated in the Manager's Decision, applicant can and hereby offers to introduce evidence in support of and to prove the various facts in support of its position set forth in the applicant's Brief filed in connection with and as a part of its "Statement of Reasons for Appeal" (substantially all of which is contained in the files and records of the Department of the Interior), together with such additional facts, if any, as may be relevant in the light of any evidence introduced in support of any charges made.

(d) So that the Department personnel considering this motion may not be required to consider repetitive statements of reasons for this and similar motions being filed by various patent applicants whose patent applications

were rejected by the Manager on February 16, 1962, now involved in this consolidated proceeding, we here adopt without further [3025] elaboration and additional reasons set forth in the Motion to Vacate and Brief in support thereof being filed by Cleary, Gottlieb, Steen & Hamilton, Washington, D. C., attorneys, in the appeals of Energy Resources Technology Land, Inc., et al., in M.A.C.-016334, et al.

Dated: May 28, 1963.

Respectfully submitted,
Akolt, Shepherd & Dick

By John P. Akolt
Wallis L. Campbell
931 Fourteenth Street
Suite 1300
Denver 2, Colorado

Attorneys for Pacific Oil Company
Appellant

BLM 094

* * * *

[3131] United States Department of the Interior Bureau of Land Management Colorado Land Office Gas & Electric Building 910 - 15th Street Denver 2, Colorado
In Reply Refer To: 5.22b ME C-012327 Feb 16 1962 Certified Mail

Decision

Pacific Oil Company John P. Akolt, Attorney-in-Fact H. J. Vander Veer, Agent Mineral Patent Application 4-2-62

Application Rejected

On September 30, 1955, the Pacific Oil Company, by John P. Akolt, its attorney-in-fact, filed in this office an application for patent to the Oyler Nos. 1 to 4 oil shale placer mining claims located in sections 10, 11, and 12, T. 6 S., R. 95 W., 6th P.M., Garfield County, Colorado and described by Mineral Survey No. 20819. The application was assigned Serial Number Colorado

012327. In support of its application, the applicant filed an abstract of title purporting to show that it had succeeded to all of the interests acquired by the original locators of the claims.

The public records of this office show that all of the claims have been involved in adverse proceedings initiated by the Register of the Denver Land Office pursuant to orders from the Commissioner of the General Land Office. On June 12, 1929, the Commissioner directed adverse proceedings against the claims on the charge of failure to perform annual assessment work. On December 2, 1931, as a result of Contest No. 12039, the Commissioner declared the claims null and void, whereupon the contestee appealed to the Secretary of the Interior. On March 10, 1932, the Commissioner's decision was affirmed.

In view of the principles of finality of administrative action, estoppel by adjudication, and res judicata, the Commissioner's decision must be regarded as conclusive. See Cameron v. United States, 252 U.S. 450 (1920); Reed v. Allen, 286 U.S. 191 (1932); Chicot Co. Drainage District v. Baxter State Bank, 308 U.S. 371 (1940); Angel v. Bullington, 330 U.S. 183 (1947); Charles Perkins, 50 L.D. 172 (1923); Charles D. Edmondson et al., 61 I.D. 355 (1954); Garth L. Wilhelm et al., 62 I.D. 27 (1955); Edward Christman, 62 I.D. 127 (1955); Opinion of the Attorney General, 36 Op. Atty. Gen. 541 (1932).

The conclusiveness of the Commissioner's decision was in no way affected by the following decisions and letter: Ickes v. Virginia - Colorado Development Corp., 295 U.S. 639 (1935); The Shale Oil Company, 55 I.D. 287 (1935); Letter of July 29, 1935, from Commissioner of General Land Office to Register, Denver, Colorado, containing instructions to close then pending contests involving the charge of failure to perform assessment work which had not proceeded to final decision. [3132] The contestee and its purported successors in interest have acquiesced in the Commissioner's decision for more than 29 years. During that time, according to those records of this office which pertain to the lands involved, the rights of other parties, including the United States, have intervened.

The application is therefore rejected.

This decision becomes final 30 days from its receipt unless an appeal to the Director, Bureau of Land Management, is filed. If an appeal is taken, there must be strict compliance with the regulations in 43 CFR Part 221 (see enclosed Form 4-1364).

If an appeal is taken, the amount of the filing fee will be computed on the basis of $5.00 for each mining claim included in the appeal. If an appeal covers all claims adversely affected by this decision the total filing fee will be $20.00

If an appeal is taken, the adverse parties to be served are: Orville Mahaffey, Grand Valley, Colorado (grazing lessee)

Director, Naval Petroleum Reserve, Department of the Navy, Room 2 B 8, Yards and Docks Annex, Washington 25, D. C. (Naval Oil Shale Reserve No. 1)

Dale R. Andrus
Land Office Manager

Enclosure

Distribution: Pacific Oil Company John P. Akolt H. J. Vander Veer Orville Mahaffey Director, Naval Petroleum Reserve Director, Bureau of Land Management Regional Solicitor, Denver Region BLM 070

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* * * *

Clerk's Note: Plaintiff's Exhibit No. 283 - letter to the Commissioner from Bradshaw 1/24/31 - appears in separate exhibit book.

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* * * *

[4583]

PLAINTIFF'S EXHIBIT 284

United States Department of the Interior Bureau of Land Management

United States of America Contestant v. John W. Savage Contestee

Contest No. 147 Involving the Placer Mining Claims Known as Hoffman Nos. 11, 12, 13 and 14 Located in T. 5 S., R. 95 W. of the 6th P.M., Garfield County, Colorado

Brief of Contestant
In Support of Proposed
Findings Of Fact And
Conclusions of Law

* * * *

[4597] The Department of the Interior took the position during this period that it was necessary to do assessment work to prevent the Government from taking possession and declaring oil shale claims forfeited because the construction that had been placed on section 37 of the Mineral Leasing Act of 1920. (30 U.S.C. § 193). This section removes deposits of oil and oil shale, among others, from the operation of the mining laws except ". . . as to valid claims existent on February 25, 1920, and thereafter maintained in compliance with the laws under which initiated, which claims may be perfected under such laws, including discovery." It has traditionally been the position of the Department of the Interior under 30 U.S.C. § 28 that the failure to do assessment work merely opened land to relocation and that the Government could not cancel entries for this ground. See P. Wolenberg, 29 L.D. 302 (1899). However, since oil shale lands had been withdrawn from further location by the Mineral Leasing Act, it was contended that the Department stood in the shoes of a relocator and on failure to "maintain" the oil shale claims in accordance with the law, i.e., failure to do assessment work, such claims could be forfeited to the Government. See Emil Krushnic, 52 I.D. 282 (1927). This position was challenged in the case of Wilbur v. U.S. ex rel

Krushnic, 280 U.S. 306 (1930). The Supreme Court there held that failure to do assessment work could not be challenged by the Government [4598] following the resumption of work. Thereafter the Department of the Interior continued to take the position that the failure to do assessment work would constitute cause for the forfeiture of mining claims. See Instructions, 53 I.D. 131 (1930). However, this decision was once again questioned in the courts and was resolved in the Ickes v. Virginia-Colorado Land Development Corporation case, supra, in which the Supreme Court held that the Department of the Interior had no authority to bring such a charge against an oil shale claim. Subsequently, as is indicated in Oil Shale Company, 55 I.D. 287 (1935), all of the decisions declaring claims null and void for failure to do assessment work were closed. (Exhibit R).

• • • •

[4632]

PLAINTIFF'S EXHIBIT 286

B-6 Department of the Interior Washington Sep -6 1917 N

Mr. R. D. George, State Geologist, University of Colorado, Boulder, Colorado.

My dear Sir:

• • • •

[4634] The performance of annual labor upon a mining claim is a matter solely between rival or adverse claimants to the same mineral ground, and goes only to the right of possession, the determination of which is committed to the courts.

• • • •

[4635] Cordially yours,

Alexander T. Vogelsang
First Assistant Secretary.

• • • •

[4637]

PLAINTIFF'S EXHIBIT 288

(Fiscal Year 1928)
Report of the Secretary of the Interior

* * * *

Disposition of a large area of oil shale lands is the subject of pending litigation, involving the construction of a statute. The department has denied the right of applicants to acquire title to these lands, and they have instituted suit to test that ruling. This case is now before the Court of Appeals of the District of Columbia on appeal from a decision of the Supreme Court of the District sustaining the action of the department.

* * * *

[4639]

PLAINTIFF'S EXHIBIT 289

Department of the Interior Washington Oct. 24 1919
Mr. R. R. Hazelwood, Amarillo, Texas.

Dear Mr. Hazelwood:

* * * *

With respect to the performance of annual assessment work on mining claims, I have to advise you that it has always been held that this is a matter between rival or adverse claimants to the same tract of land, and within the jurisdiction of the courts and not of this Department. This is for the reason that the penalty for failure to perform annual assessment work as required by law is relocation, and as you know, the determination of rights between two or more claiming the same piece of land under the mining laws must, under the Revised Statutes, be disposed of through the fil- [4640] ing of adverse claims and suits in the courts.

* * * *

Very truly yours,

Alexander T. Vogelsang
First Assistant Secretary.

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* * * *

[4643]

PLAINTIFF'S EXHIBIT 292

Address Only The Commissioner of the General Land Office

United States Department of the Interior General Land Office Washington Jun 28 1935

In Reply Please Refer to 1606652 "N" CRB Oil Shale records. Instructions.

Register, Salt Lake City, Utah.

Sir: Replying to your letter of June 15, 1935, relative to records in contest cases involving oil shale placers wherein the only charge made relates to failure to perform annual assessment work, you are advised that on June 3, 1935, the Supreme Court held in the case of Harold L. Ickes, Secretary of the Interior, vs. Virginia-Colorado Development Corporation, that the United States is without authority to challenge the validity of an oil shale placer on account of failure to perform the annual assessment work thereon.

However, the adverse proceedings pending in your office were initiated under instructions from the Department and until this office is authorized to do so, which [4644] probably will not be until the mandate of the court in the above case has been received in the Department, action on the pending cases will continue suspended.

As soon as instructions are received from the Department you will be further advised in the matter of the disposal of the cases pending in your office.

Very respectfully,

Fred W. Johnson
Commissioner.

6-26 edt

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Clerk's Note: Plaintiff's Exhibits No. 296 - Description of Claim and No. 297 - Description of Claim - appear in separate exhibit book.

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* * * *

[4713]

PLAINTIFF'S EXHIBIT 306

Name: Altizer, Posey J.

Service Record with Interior:

4/ 1/29- 7/ 2/30	Attorney, General Land Office
7/ 3/30- 6/30/34	Attorney General Land Office (det. to Ofc. of Solicitor from 6/9/33-6/30/34)
7/ 1/34- 6/30/43	Attorney, Office of the Solicitor
7/ 1/43- 9/30/45	Attorney, General Land Office
9/30/45	Retirement

June 6, 1966

[4714]

Name: Barash, Max

Service Record with Interior:

12/11/33- 1/15/34	Assistant Solicitor, Office of the Solicitor
1/16/34- 6/30/34	Assistant Solicitor, General Land Office
7/ 1/34- 6/30/34	Assistant Solicitor, Office of the Solicitor
7/ 1/43-11/19/43	Assistant Solicitor, Geological Survey
11/20/43- 9/17/48	Chief Counsel, Geological Survey
9/17/48	Resigned

June 6, 1966

[4715]

Name: Bradshaw, Clarence R.

Service Record with Interior:

3/ 7/21- 5/ 7/31	Clerk, General Land Office
5/ 8/31-12/31/34	Jr. Adm. Ass't (Law Examiner), General Land Office
1/ 1/35-10/25/38	Law Examiner, General Land Office

10/26/38- 7/11/43	Chief, Minerals Division, General Land Office
7/12/43- 6/13/44	Assistant Solicitor, General Land Office
6/14/44- 8/ 6/45	Attorney, General Land Office
8/ 7/45- 7/27/47	Ass't Chief Counsel, General Land Office
7/28/47-11/11/51	Chf., Br. of Adjudication, General Land Office
11/12/51- 6/30/54	Gen'l Attorney (Ass't Chf. Counsel), Bu. Land Management
7/ 1/54	Mass Transfer to Office of the Solicitor
2/14/56- 8/16/59	Atty-Adv. (Gen.) (Ass't Solicitor). Br. of Minerals, Div. of Public Lands, Office of the Solicitor
8/17/59- 1/ 6/61	Gen'l Attorney (Associate Solicitor), Div. of Public Lands, Office of the Solicitor
1/ 7/61	Retirement

June 6, 1966

[4716]

Name: Duckworth, Earl Clifford

Service Record with Interior:

8/ 1/29- 1/31/34	Jr. Administrative Assistant (Adjudicating Clerk) General Land Office
2/ 1/34- 3/13/44	Law Examiner, General Land Office
3/14/44- 8/17/45	Adjudicator, General Land Office
8/18/45- 4/ 4/54	Attorney, General Land Office
4/ 5/54- 6/30/54	Chief Counsel, Bureau of Land Management
7/ 1/54	Mass transfer to Office of Solicitor
3/ 1/56- 3/31/61	Attorney-Adviser (Gen.) Division of Public Lands, Office of Solicitor
3/31/61	Resignation (Retired 1/31/60. Reemployed Annuitant 2/1/60-3/31/61)

June 6, 1966

[4717]

Name: Duncan, Royal R.

Service Record with Interior:

7/ 1/28- 7/31/33	Attorney, Office of the Solicitor
8/ 1/33- 4/26/34	Land Attorney, Office of Indian Affairs (detailed to Office of Solicitor)
4/27/34-10/31/45	Assistant Solicitor, Office of the Solicitor
10/31/45	Retired

June, 1966

[4718]

Name: Edelstein Harr. M.

Service Record with interior:

5/ 4/36- 8/15/42	Assistant Solicitor, Office of Solictior
8/16/42- 2/13/49	Assistant Solicitor (Chief, Public Lands Division) and Alternate Member, Bd. of Appeals, Office of Solicitor
2/14/49- 8/ 5/50	Assistant Solicitor (Chief, Public Lands Division) and Member, Bd. of Appeals, Office of Solicitor
8/ 6/50- 1/ 1/54	Attorney-Adviser (Assistant Solicitor) Office of Solicitor
1/ 1/54	Resigned

June 6, 1966

* * * *

[4724]

Name: Margold, Nathan R.

Service Record with Interior:

3/23/33- 7/ 9/42	Solicitor for Department of the Interior (In this period, or from 1/16/34 to 11/22/34, Mr. Margold also served as Chairman, Petroleum Administration Board

June 6, 1966

[4725]

Name: Speck, David J.

Service Record with Interior:

1/10/38- 7/31/39	Attorney, Office of the Secretary (Detailed to Office of Solicitor)
8/ 1/39- 9/24/39	Attorney, Office of Solicitor
9/25/39- 8/10/42	Assistant Solicitor, Office of Solicitor
8/10/42	Resigned

June 6, 1966

[4726]

Name: Wasserman, Jacob N.

Service Record with Interior:

10/ 6/41- 6/30/43	Attorney, Office of the Solicitor
7/ 1/43- 8/29/43	Sr. Attorney, General Land Office
8/30/43- 1/28/51	Chief Counsel, General Land Office
1/29/51- 3/30/53	General Attorney (Chief Counsel, Bu. Land Management
3/31/53	Resignation

June 6, 1966

* * * *

[4728] Filed United States District Court Denver, Colorado Jun 17 1966 G. Walter Bowman Clerk By

United States District Court for the District of Colorado

The Oil Shale Corporation, et al., Plaintiffs, vs. Stewart L. Udall, Secretary of the Interior, Defendant.

Civil Action No. 8680 Defendant's Partial Answer to Plaintiff's Interrogatory No. 126

Int. No. 126. Attached hereto are sheets reflecting service and position of those individuals listed in Interrogatory No. 126, who, in fact, acted as attorneys within the Department of the Interior.

Further answer to this interrogatory will be made when additional materials are available.

Attachments.

Lawrence M. Henry
United States Attorney for the
District of Colorado

By David I. Shedroff
Assistant United States Attorney.
Attorneys for Defendant.

[4729]

PLAINTIFF'S EXHIBIT 307

Oscar L. Chapman

Interior Service subsequent to 6-30-30

5- 4-33	to 3-22-46	Assistant Secretary of the Interior
3-23-46	to 12- 1-49	Under Secretary of the Interior
12- 1-49	to 1-20-53	Secretary of the Interior

[4730]

Asa N. Cummiford

Service with Interior subsequent to 6-30-30

8- 1-25	to 12-15-37	Junior Administrative Assistant (Law Examiner) General Land Office
12-16-37	to 3-13-44	Division Reviewer and Law Examiner General Land Office
3-14-44	to 7-14-46	Adjudicator (Division Reviewer) General Land Office
7-15-46	to 4- 1-50	Adjudicator (Division Reviewer) Bureau of Land Management
4- 2-50	to 11-30-52	Adjudicator (Public Lands) Bureau of Land Management

[4731]

Edward C. Finney

Service with Interior subsequent to 6-30-30

3-11-20	to 3-22-33	Solicitor for the Interior Department
3-23-33	to 4-16-33	Special Attorney to the Secretary

[4732]

Urban E. Goener

Service with Interior subsequent to 6-30-30

7- 1-28	to 6-30-32	Assistant Law Examiner General Land Office
7- 1-32	to 9- 4-36 (Death)	Assistant Chief Mineral Division General Land Office

* * * * *

[4734]

Lee Muck

Interior Service subsequent to 6-30-30

8-28-23	to (date not ascertainable from file)	Forest Valuation Engineer U. S. Indian Field Service
5-29-31	to 10-21-37	Assistant Director of Forestry Indian Service
10-22-37	to 5-16-38	Director of Forestry Bureau of Indian Affairs
5-17-38	to 9-25-40	Director of Forests of the Department of the Interior
9-26-40	to 12-20-50	Assistant to the Secretary in Charge of Land Utilization
12-21-50	to 6- 7-53	Director, Division of Land Utilization Office of the Secretary
6- 8-53	to 12-31-55	Staff Assistant (Land Management) Office of Assistant Secretary for Public Land Management

[4735]

Julian D. Sears

Interior service subsequent to 6-30-30

7- 1-28	to 9-30-30	Senior Scientist (Administrative Geologist) (Geological Survey
10- 1-30	to 10-15-36	Special Scientist (Administrative Geologist) Geological Survey
10-16-36	to 6-27-48	Administrative Geologist Geological Survey
6-28-48	to 8-17-50	Geologist Geological Survey
8-18-50	to 6-30-61	Geologist (General) Geological Survey

[4736]

Joel D. Wolfsohn

Service with Interior subsequent to 6-30-30

11-16-37	to 3-19-41	Assistant to the Commissioner General Land Office
3-20-41	to 7-15-46	Assistant Commissioner of the General Land Office
7-16-46	to 2- 6-47	Acting Associate Director Bureau of Land Management
2- 7-47	to 5-31-47	Associate Director Bureau of Land Management
6- 1-47	to 5-31-48	Consultant Office of the Secretary
5-22-50	to 7- 9-52	Special Assistant to the Secretary
7-10-52	to 2-20-53	Assistant Secretary for Public Land Management

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[4741]

PLAINTIFF'S EXHIBIT 308

Deposition of J. Elliott Hall
(Taken by Plaintiff The Oil Shale Corporation)

Pursuant To Notice, the deposition of J. Elliott Hall, called for examination by the plaintiff The Oil Shale Corporation, was taken at Suite 2108, Denver United States National Bank Center, in the City and County of Denver, State of Colorado, beginning at the hour of 9:30 o'clock in the forenoon of the 13th day of June, 1966, before Bertram Naster, a Certified Shorthand Reporter and Notary Public in and for the State of Colorado;

The plaintiff The Oil Shale Corporation appearing by its attorneys, Tweedy, Mosley, Aley & Young, by Mr. John B. Tweedy, and Cleary, Gottlieb, Steen & Hamilton, of New York, New York, and Washington, D. C., by Mr. Richard W. Hulbert and Mr. Donald L. Morgan;

The plaintiffs Umpleby, et al., appearing by their attorneys, Winner, Berge, Martin & Camfield, by Mr. Warren [4742] Martin;

The plaintiffs Napier, et al., appearing by their attorney, Mr. Richard L. Eason;

And the defendant appearing by his attorneys, Mr. David Shedroff, Assistant United States Attorney, and Mr. Robert Mesch, Assistant Regional Solicitor for the U. S. Department of the Interior;

There being also present Mr. Robert W. Bennett, of Colorado State Office of Bureau of Land Management;

It Being Stipulated that all objections as to materiality, relevancy, or competency may be reserved until the time of trial or such time as said deposition or any part thereof is offered for any purpose.

Whereupon, the following proceedings were had:

* * * *

[4743] J. Elliott Hall,

called for examination by the plaintiff The Oil Shale Corporation, being first duly sworn, testified as follows:

EXAMINATION BY MR. HULBERT

Q. Would you state your name for the record, please. A. J. Elliott Hall.

Q. What is your address, sir? A. 3091 South Gilpin, in Denver.

Q. Before we begin, Mr. Hall, just let me say one or two things. I don't know whether you are familiar with what goes on in an examination of this kind. Perhaps you have discussed this with your lawyers. Basically, it consists of my asking you some questions and your stating the answers as best you can. It may be that your lawyer would have objection to a question and there may be, therefore, some discussion. I trust it will not become an argument between counsel. And if that kind of intervention arises, why, just wait for the dust to settle. Mr. Hall, what is your present position? [4744] A. Chief of the Division of Land—let's see, a new title—Division of Lands and Minerals Program Management and Land Office.

Q. That is in the Colorado State Office? A. That's correct.

Q. Bureau of Land Management? A. That's correct.

Q. How long have you held that position, Mr. Hall? A. This is a—I'd say about two or three months. This is a result of a reorganizational change in which the lands and Minerals Section has been consolidated with the Land Office.

Q. Prior to your assuming your present position, what position did you hold? A. Chief of the Lands and Minerals Section in the Colorado State Office.

Q. How long did you hold that position? A. I think from about 1962 to the present time.

Q. Prior to 1962, Mr. Hall, what was your position? A. I was Land Office Manager for slightly less than one year, and prior to that I was chief of the Lands and Minerals Section in the Colorado State Office, to 1954.

Q. You say to 1954. Do you mean from 1954? A. From '54 till that.

Q. Manager of what land office, Mr. Hall? [4745] A. In Colorado, land office.

* * * *

[4768] Q. Did the mineral examiners submit written reports? A. Yes.

Q. Were they required to submit reports in writing? A. Yes.

Q. It was one of their duties as mineral examiner to submit such report? A. That's correct.

Q. Who was that report submitted to? A. That was submitted to the—to me, at the time I was Lands and Minerals officer.

Q. And what did you do with it? A. This varied, depending upon the situation.

Q. Let me be a little more precise. Did you read it? A. Surely.

Q. Do you recall any occasion on which a mineral examiner's report was submitted to you where you did not read it? A. No. I had to rely, of course, to a great extent upon the mining engineers and—

Q. I didn't mean whether you second-guessed him. I meant, did you read his report? Do you recall any occasion in which a report was submitted to you that you did not read? A. I would normally read it, yes.

Q. Was it one of your functions to approve it or disapprove it? [4769] A. Yes.

Q. If you approved it, how did you indicate approval? A. By signature.

Q. Do you recall any occasion where you approved a mineral examiner's report without reading it? A. No, I don't think so.

Q. Do you recall any occasion on which you indicated approval of a report which you thought should not be approved? A. No, I don't.

Q. Mr. Hall, what standards governed your approval of a report? A. Following the Manual, of course, attempting to determine whether the factual information in the report was adequate and would support the recommendations or conclusions of the mining engineer.

Q. In short, your standard was whether the facts stated in the report appeared to warrant the conclusion expressed by the examiner— A. That's correct.

Q. —in terms of the proper criteria? A. That's right.

Q. And the issuance of a patent,in the case where the examination of the patent had been made in connection with the patent application? A. That's right. And, of course, the reports had a [4770] general format that they covered concerning the historical aspect, the geology, land ownership, and so on, so there was pretty much a standard format that they followed in the compiling of a field report.

Q. Was a favorable mineral examiner's report which had been approved by you given further review by anybody else? A. Yes.

Q. Who reviewed it? A. I'm sure they got—at least, as to any of the legal facets of a report, they would get some review in our own Adjudication Section in the Land Office, and also at the Washington level, if and when they were submitted there.

Q. So far as you understand, the reports were read by the Adjudicator in the State Office? A. That's correct.

Q. In the Land Office of the State Office? A. That's right.

Q. And were then read again in Washington? A. That's correct. Now, the Land Office probably would not

give it a review as to the physical features of the land, for example, possibly discovery requirements, unless there was some legal phase. But they would—their review was confined to the legal phases of the report.

Q. Did your office or the Land Office conventionally submit mineral examiners' reports to the Regional Solicitor? [4771] A. Yes, we do.

Q. You sent them to the Solicitor yourself? A. They were probably submitted over the State Director's signature.

Q. This was invariably done? A. Not invariably, no.

Q. Do you know whether the Director of the State Office reviewed each mineral examiner's report? A. I don't think he did.

Q. Did the Area Administrator have any function in reviewing these reports? A. Up until or when we were under the old Area administration, we did have a staff mineral man out there; I think he may have reviewed them at that time.

Q. When you are speaking about the old administration, to what period are you referring? A. Well, we had an area setup from about 1954 to—gee, I don't know, maybe '58, thereabouts.

Q. Mr. Hall, when a report had been submitted to you by the examiner and you had read it and approved it, to whom or to what office was that report sent? A. To the Land Office.

Q. Was it accompanied by a recommendation from you as to what action should be taken? A. Yes, usually, usually.

* * * *

[4794] Q. (By Mr. Hulbert) Mr. Hall, I direct your attention to page 40 of Plaintiffs' Exhibit 11, and ask you what recommendations were made in that report. A. The recommendation was made that adverse action be taken against each of these claims, "charging that the assessment work has not been done each and every year since the date of the leasing act."

Q. Did that alert you to the possibility that these claims had been the subject of assessment work proceed-

ings? A. If I saw it at the time, I—I certainly can't remember whether I did or not.

Q. Do you have any reason to suppose that you did not? A. I have no way of knowing, because I might have relied on the practice of—or recommendation of the mining engineer.

Q. Did you regard Mr. Sholes as an experienced mineral examiner? A. Yes.

Q. Was Mr. Sholes aware, so far as you knew, of prior assessment work contest decisions? A. I'm sorry, you will have to repeat that.

[4795] Q. Did you have any knowledge as to whether Mr. Sholes was informed of prior assessment work contest decisions? A. Yes, I'm sure he was.

Q. Referring you to Plaintiffs' Exhibit 10, which is the 1957 report, and particularly pages 6 and 7 of the report, Mr. Sholes made two recommendations, did he not? A. Yes. He recommended that—

Q. He first recommended that the applicant be required to show that the description of the claims, as shown in the application, represented the location of the claims as originally staked? A. On the ground, right.

Q. And his second recommendation was that, if that was satisfactorily done, that a charge be raised concerning the sufficiency of patent work, is that correct? A. The sufficiency of the $500.00 worth of labor, yes.

Q. Did Mr. Sholes make any other adverse comments about the application or the claims? A. Not in this—not that I see here.

Q. Consistent with the practice of mineral examiners, Mr. Hall, would it not have been a fact that had Mr. Sholes believed any other grounds upon which the application was deficient existed, his report would have noted them? A. I think so.

Q. Mr. Hall, do you recall whether at or after the [4796] date of Mr. Sholes' report in 1957, you became familiar with the file in a contest proceeding that had been brought against the Oyler claims at an earlier time? A. Are you talking about these old contests here?

Q. Yes. A. I don't remember.

• • • •

[4879]

PLAINTIFF'S EXHIBIT 309

Deposition of William L. Shafer

Washington, D. C.

June 17, 1966

* * * *

[4885] Washington, D. C. Friday, June 17, 1966

Deposition of William L. Shafer, formerly of the Bureau of Land Management, Department of the Interior, called for examination by counsel for the plaintiffs in Civil Actions Nos. 8680, 9202, and 9465, pursuant to notice (a copy of which is attached to the court copy of this transcript), before Dorothy B. Delehanty, a notary public in and for the District of Columbia, in the law offices of Cleary, Gottlieb, Steen & Hamilton, 1250 Connecticut Avenue, Northwest, Washington, D. C., 20036, commencing at 10:15 a.m.

[4886] Appearances: On behalf of the plaintiffs in Civil Actions Nos. 8680, 9202, and 9465: Cleary, Gottlieb, Steen & Hamilton By: Richard W. Hulbert, Esq., of their New York City office, 52 Wall Street, and Donald L. Morgan, Esq., of their Washington, D. C., office, 1250 Connecticut Avenue Northwest. On behalf of the defendant in all five causes: Thomas L. McKevitt, Attorney, Department of Justice, Room 2127 Department of Justice Building, Washington, D. C.

Also Present: Glen E. Taylor, Attorney, Department of Justice, and Edwin H. Montgomery, Chief, Mining Staff, Bureau of Land Management, Department of the Interior.

* * * *

[4889] Proceedings

MR. HULBERT: I should like to say before we begin that this deposition of Mr. William Shafer is being taken pursuant to notice served on an Assistant United States Attorney, Mr. David Shedroff, in the District of Colo-

rado, on June the 8th, and filed in the United States District Court for the District of Colorado on June 9th. A certified copy was submitted to the District Court in the District of Columbia, and the subpoena was issued at the request of plaintiffs, and Mr. Shafer is appearing here this morning pursuant to that subpoena. Whereupon—

WILLIAM L. SHAFER

was called for examination by counsel for the plaintiffs in Civil Actions Nos. 8680, 9202, and 9465 and, having been first duly sworn by the notary public, was examined and testified as follows:

DIRECT EXAMINATION BY MR. HULBERT

* * * *

Q. What is your present occupation or position? [4890] A. Consultant of the House Interior and Insular Affairs Committee.

Q. How long have you occupied that position? A. Since August 15, 1965.

Q. Prior to your present position, what was your position? A. I was employed by the Bureau of Land Management, Department of Interior, from 1955 to August of 1965. I was located in Washington, D. C. Prior to that, I had worked for the Bureau of Land Management in San Francisco, Sacramento, Reno, Nevada, and various other locations in the western states.

Q. What was your title during your period in the Bureau inWashington? A. Chief, Branch of Mining.

Q. In what division of the Bureau was that? A. Well, originally it was a division of the Division of Minerals, but titles changed, my title changed, but the duties were essentially the same. But for the majority of the time, I was Chief of Branch of Mining within the Division of Minerals.

Q. Would you review briefly for us, Mr. Shafer, your education and experience prior to the time you went to work for the Department of Interior. A. I obtained a degree in geology in 1942. I had [4891] worked for the

Bureau of Reclamation for a short time. I had worked for Remington Arms as an industrial engineer. I worked for E. I. du Pont de Nemours as an industrial engineer. I entered the Navy in 1944. I was in the Navy until 1946. I was then employed by the Corps of Engineers until 1949, when I transferred to the Bureau of Land Management.

Q. What was your position, what job with the Army Engineers? A. Valuation engineer in the examination of mining claims and mineral properties.

Q. What was your job in the West for the Bureau of Land Management? A. As a valuation engineer, the duties were essentially the same: the examination of mineral properties, patent applications, and to a minor extent, land cases. But primarily in the minerals field.

Q. Could you generally describe for us your duties and functions as a valuation engineer in the Department of Interior. A. You were charged with the responsibility of examining mining claims for patent, was one of the functions, or for any conflict of the mining claim with other uses. You determined the validity and recommended that patent issue or a patent not issue, or you recommended that a contest be brought against the claim for various reasons.

[4892] Q. As a valuation engineer—Incidentally Mr. Shafer, is a valuation engineer a mining engineer? Are they synonymous terms? A. A valuation engineer is a civil service terminology, and it has no comparable equivalent that I know of in the professional—A valuation engineer could be a mining engineer, or it could be a geologist, or it could be a combination of various other degrees that are given by a university.

Q. My question perhaps was not quite clear. I meant, are valuation engineers commonly referred to as mining engineers in just parlance, discussion, reference? A. They could be, but whether they—I think, yes, they are either referred to as mining engineers or as geologists or valuation engineers. It's somewhat interchangeable.

Q. As a valuation engineer for the Bureau, did you become familiar with the manner in which patent applications were processed at the time? A. Yes.

Q. Would you tell us very briefly how that processing was then carried out. A. Well, upon application, or upon submission by an applicant of an application for a patent, a mining engineer or a valuation engineer was assigned the case, and it was his responsibility, after assignment of the case, to make [4893] what record examinations he felt was necessary to physically examine the claim, to sample the claim in the manner that he thought proper, to determine whether the claim was geographically located substantially in accordance with the plat or the description of the claim. It was then his responsibility to submit his recommendation as to whether he thought the claim was justified to go to patent.

Q. Were there functions with respect to the processing of patent applications at that time performed in the Land Office? A. Yes, there were.

Q. What were they? A. At approximately the same time, a copy of the application would go to the Land Office where upon receipt, first receipt, it would be preadjudicated. This was a preliminary type of adjudication, primarily to see that the land, subject of the application, was open to mining location, and a few other essentials, would meet the requirements of the mining law. At a subsequent time, it received a detailed adjudication by personnel in the Land Office. This would go to the citizenship and all the other requirements that were necessary for a patent application.

Q. You said at a subsequent time. Did you mean that the manner in which this was done changed at some point in [4894] time? A. No; I meant at a time subsequent to the first preliminary preadjudication.

Q. Was that done in the local Land Office or done in Washington?—this more extensive review you speak of. A. That was done—

Q. I am speaking now of the time that you were a valuation engineer. A. At the time I was familiar with it, it was done in the field.

Q. Was any part of the process of reviewing a patent application performed in Washington at that time, if you recall? A. Prior to about 1952, it is my understanding that a rather detailed examination of all patent appli-

cations was made in Washington. I was not in Washington at that time, but this is my understanding, that prior to about 1952, adjudication, or another adjudication, a final adjudication was performed in Washington.

Q. You said that part of the function of the valuation engineer, his work in connection with the processing of a patent application, included a check of the records he felt necessary. A. Yes.

Q. Mr. Shafer, would that have included a check with [4895] any prior administrative contest proceedings involving the property which was the subject of the application? A. If he suspected or had reason to believe that there were prior contests or prior actions, it would have been his responsibility to make a check, or to see that a check was made.

Q. Mr. Shafer, you have used the term "adjudication" in the course of describing the processing of a patent application. Am I right that that is a term that, as you use it, refers to the administrative steps taken in processing or reviewing the application? A. Yes, it is.

Q. Do you know, Mr. Shafer, whether there were available to the adjudicators in Washington any official records of the Department, relating to the status of the lands involved in the patent application? A. Yes. All records, or practically all records, were available to the adjudicators in Washington, because in what was termed at that time, or subsequently termed the Eastern States Office, there were essentially duplicate records in Washington that were maintained in each of the State Offices.

Q. Do you know whether these records were checked by the adjudicators in Washington in the course of processing an application? [4896] A. During what period of time?

Q. Well, I am now speaking of the time when you were in the field, if you know. A. Well, I wouldn't know of personal knowledge, because I wasn't in Washington. It is my understanding that these records were checked by adjudicators or by record checkers in the Eastern States Office.

Q. Were these records checked after you came to Washington, if you know? A. Yes, for a short period of time they were, because shortly after I came to Washington, or almost upon my arrival in Washington, the processing of patent applications and the final adjudication of patent applications was decentralized to the field.

Q. Can you identify a little more precisely for us the nature of these records which you have described as available in Washington? A. Well, it was a complete set of public land records, plat books, tract books, records of prior action on each piece of federal land. It would include mineral leases. It would not include in all instances mining claims, because mining claims are not recorded originally with the Federal Government. But it would include contest actions, or actions that had been initiated by the Federal Government against mining claims.

[4897] Q. Mr. Shafer, you said you came to Washington in the Minerals Division in 1955. Would you tell us what your duties and responsibilities were in that post. A. I was staff officer in charge of mining, and it was my responsibility in that capacity to give direction, technical direction to the field on mineral matters, primarily mineral patent applications, mining claims, and adjudication of these applications, to prepare regulations, procedures, and instructions, and generally act as an adviser to the director or to my superior, who was Chief of the Division of Minerals.

Q. Did your functions include any specific responsibilities with respect to the processing of mineral patent applications? A. Yes.

Q. What were they? A. There were two responsibilities: One was a general review for the sufficiency of procedure, regulations, and the accuracy of the field offices in following the regulations or the procedures. The other function was a spot-checking of patent applications that were submitted to Washington for patenting.

Q. Mr. Shafer, what was the chain of command, if I can use that term, between you and the Director of the Bureau of Land Management during the time you had your position with [4898] the Minerals Division in Wash-

ington? A. My immediate superior was the Chief, Division of Minerals. His superior, immediate superior, was Assistant Director for Lands and Minerals. And then, we had the Associate Director for the Bureau of Land Management, and then the Director.

MR. HULBERT: Would you read me the first part of that answer, please.

(Record read.)

BY MR. HULBERT: Q. Mr. Shafer, who occupied the post of Chief, Division of Minerals, during your tenure in Washington? A. For approximately the first two years, it was Louis E. Hoffman, and after about 1957 it was Max Caplan.

Q. Is either Mr. Hoffman or Mr. Caplan still with the Department? A. Mr. Caplan is.

Q. Do you know what post he holds now? A. I don't know the exact title that he holds. I think it's Chief, Branch of Program Planning, or something like that. I'm not sure of the exact title.

* * * *

[4902] Q. Mr. Shafer, which if any of these officials who were in your chain of command actually had any part in the review of patent applications in Washington? A. At one time or another, all of them would have had some responsibility for review, or at least for surnaming and approving patent applications. Possibly I should modify that to say that either patent applications or appeals and decisions that were written pursuant to contests that may have been started against mining claims which were subject to patent applications.

MR. HULBERT: I'm sorry. Would you read that answer, please.

(Answer read.)

BY MR. HULBERT: Q. Mr. Shafer, you have mentioned the practice of surnaming. I wonder if you would tell us a little bit about it. First let me show you—Well, let me get a document [4903] marked.

MR. HULBERT: Would you mark this Plaintiff's Exhibit 36. It is a copy of a letter dated August 29,

1950, from Mr. Doty, Assistant Secretary of the Interior, to Mr. Barney L. Whatley.

(Letter described was marked as Plaintiff's Exhibit 36 for identification.)

BY MR. HULBERT: Q. Mr. Shafer, I hand you the document that has been marked Plaintiff's Exhibit 36. Directing your attention to the box in the upper right-hand corner, I ask you if that is an illustration of the practice of surnaming to which you referred. A. That is.

Q. Can you identify any of those names? I apologize for the fact that it isn't the best possible copy. A. I can recognize two signatures: the first one, Giller; and the next-to-the-last one is Hom, as it is written here, Hom. And yes, I recognize the third signature, of Clawson.

Q. Now, who is Mr. Giller, the first of the gentlemen you mentioned; do you know? A. I don't know what Mr. Giller's title was in 1950, but from 1955 until 1965, Mr. Giller was Chief of the Branch of Leasing within the Division of Minerals, and was my [4904] counterpart in the Division of Minerals. He had similar duties on leasing as I had on mining.

Q. And who is the Mr. Hom, H-o-m, that you referred to? A. Well, Mr. Hom is now, or was when I left, a Chief of the Division of Appeals in the Solicitor's office.

Q. And the third name you identified as Clawson, was that C-l-a-w-s-o-n? A. He was a Director of the Bureau of Land Management.

Q. As of 1950? A. As of 1950, until about 1960, I suppose. No, 1953.

Q. What did these surnames indicate in the practice of the Department during your period there? A. It indicated that the individual that surnamed it had read—

MR. McKEVITT: If you know.

MR. HULBERT: Yes.

MR. McKEVITT: I mean, are you talking about the other people or yourself?

THE WITNESS: I am talking about my general understanding of what surnaming meant to me and what

I understand it meant to other people within the Department.

MR. McKEVITT: Just for the record, I will note an objection to that question.

MR. HULBERT: Let's go at it this way, Mr. Shafer: [4905] BY MR. HULBERT: Q. During the period when you were in the Department, was there a practice known to you of surnaming documents? A. Yes, there was.

Q. Did you yourself surname documents? A. Many.

Q. What did you understand the effect of your surname on the document was? A. That I had read and approved, to the extent of my capacity in which I was acting, I had read and approved the document and surnamed it.

Q. If you had not approved the document, what would you have done with respect to the surname practice? A. There were two things you could have done: either refuse to surname it, or surname it with a qualification, say that I approve as to this portion but not as to some other portion. It would be a qualified approval.

Q. Was this surnaming procedure in the Department a practice that you were instructed to follow when you came to Washington? Or, to put it another way, how did you know, Mr. Shafer, that you were expected to surname documents? A. I think the procedure was explained to me that this was the procedure; in your capacity as a reviewing officer, you reviewed it, and because you were not the one that gave final approval, or you didn't sign the document, this signified the [4906] fact that you had read and approved the signature, and it would be a notification to your superior that you had reviewed and agreed with the contents of the memorandum.

Q. During your period in Washington, Mr. Shafer, did you acquire any understanding as to whether the practice of surnaming had been employed in the Department in prior years: that is, prior to the time you got to Washington? A. Yes, it was my understanding it was not a new procedure.

Q. Was it your understanding that the prior practice was as you described it to have been during the time you were there? A. It is.

MR. HULBERT: Off the record.

(Discussion off the record)

BY MR. HULBERT: Q. Now, Mr. Shafer, were you yourself expected to review patent applications for mineral claims that came to the Director's office in Washington? A. Not all of them; but under certain circumstances we were expected to review a sufficient number of them that we were satisfied that the procedures and regulations of the Department were being followed by the field offices.

* * * *

[4912] Q. Was a part of that review, Mr. Shafer, to check old contest records of contests involving oil shale patents? A. It would be, if there was any indication that a previous contest had been brought against the claims, or if there was not information in the file that someone else had previously checked to determine if a contest had previously been brought against these claims.

Q. How did your office proceed to inquire whether contest decisions had been rendered against oil shale claims? A. If there was any indication in the mineral examiner's report, or any memoranda from the state office, which would indicate that the previous—or that they had been checking for a previous contest brought against the claims, this would be an indication to us whether or not someone else had checked. If they had not, we would either check ourselves or send it back to the field office for checking.

Q. How would that check be made, if your office were to do it? A. By calling for whatever documents were necessary, either from the record center or the archives, or from the Eastern States office, and trying to determine from the records available what previous actions had been initiated by the Government.

[4913] Q. What records were available for that purpose? A. There were the regular tract and plat books in the office; there was a contest docket, and there were

a set of what we termed "special oil shale plat books," which had been compiled sometime in the middle or late thirties, and which supposedly was a record or the best available record of all previous actions taken on oil shale claims in three states. We used those special plat books rather extensively.

Q. Which three states were those? A. Colorado, Utah, and Wyoming.

Q. And these special plat books, as you describe them, contained references to contest decisions? A. They contained reference to contest decisions, to mining claims, the location of mining claims geographically, and to previous actions that had been taken against the claims.

Q. You said earlier, Mr. Shafer, that in general, the Department did not have adequate or complete records of unpatented mining claims. Do I understand you to say that these special oil shale plat books did contain data respecting unpatented claims? A. They contained data respecting unpatented oil shale claims, quite likely not all oil shale claims, but the best available record that the Department or, so far as I know, that anyone else had, other than the county offices, county recorders' offices themselves.

[4914] Q. Do you recall, Mr. Shafer, whether the special plat book itself contained material that would answer the question as to the ground on which the contest had been brought? A. No, it did not.

Q. Well, how did you go about finding that? A. The plat books would contain a township diagram, the township was divided, subdivided into sections and into quarter sections, and in each quarter section. If there was an existing oil shale claim that the Government had taken any previous action against, it would be listed either by name and/or by what we called a miscellaneous number. By using this number or any other number that was given, you could obtain the original records that would give you the information as to action that had been taken on that particular claim.

Q. Would the original records be obtained? A. I don't—

Q. I mean, is that what you do? Do you go to the plat book to get the number? A. If you had a question on it, they would be obtained, yes.

Q. Where were the original records kept? A. In various places. Some of them are still within the Department, some were in the record center, and as I recall, some were in the archives.

[4915] Q. Mr. Shafer, perhaps to repeat a question I asked you earlier: This process that you are describing as performed in your office as a review of a complete adjudication that had been performed in the field; is that right? A. Yes. The mineral patent application—now speaking of oil shale—would have been processed in the field offices, primarily in Colorado, because they were most active. They would have approved the patent application for patent, sent it in to Washington, and in the normal course of events, patent would have issued by the patenting section, except that we were instructed to review or to give another review of these oil shale patent applications to assure accuracy.

Q. During your time in Washington, was it your understanding, Mr. Shafer, that the state offices performing this initial adjudication of oil shale patent applications were supposed to check for prior contests against oil shale claims?

MR. McKEVITT: I object to the form of that question. A. Yes.

BY MR. HULBERT: Q. Were you familiar, Mr. Shafer, during your time in Washington, with the extent to which the state offices were or were not supposed to check for prior contests? A. I was familiar with the extent with which we asked [4916] them to check, and instructed them to check, and advised them to check. I don't think I was physically present in the Land Office at any particular time when they actually made the check.

Q. But if the state offices acted pursuant to the instructions and advice that the Director's office had given them, they would check, would they not? A. They would check.

Q. What if any records, if you know, or other source of information, were available to the state offices in con-

nection with any check that they might have made of prior contests against oil shale claims? A. You mean within the state office itself?

Q. Yes. A. Or what could they have obtained—

Q. More broadly, what either was there,available to them,or elsewhere available to them? A. Well, they had the same access to records that we had; in the archives, the record center. They were furnished, as I recall, with microfilm copies of these special plat books, and instructed to refer to them when necessary or appropriate, within their particular offices. I think they had essentially the same information that was available in the Eastern States Office in Washington, but they would not have, of course, the records that were in the record center [4917] or the archives, but they could call for them.

Q. Mr. Shafer, if you know, were there contest dockets in the state offices? A. There were contest dockets in the state office (sic). I don't know what period of time that they covered. And this practice, to some extent, varied from office to office.

Q. Focusing you particularly on the Colorado State Office. A. I'm not positive. I don't know.

Q. Mr. Shafer, what was the purpose of checking the records of these old contests against oil shale claims, as performed in your office?

THE WITNESS: Would you repeat that, or read it back?

(Pending question read.)

A. To determine what charges and what final action had been taken against the claims in previous years?

BY MR. HULBERT: Q. Did it come to your attention, Mr. Shafer, in the course of your work in Washington, that contests had been brought previously against oil shale claims on grounds of failure to perform assessment work? A. Yes.

Q. Did you know that, prior to the time that you came to Washington in 1955? [4918] A. I did.

Q. Was it your impression that the number of these contests was substantial? A. Yes, it was.

Q. During your tenure as Chief of the Mining Branch of the Minerals Division, did it come to your attention that patent applications were being processed for oil shale claims that had previously been declared null and void for failure to perform assessment work? A. Yes.

Q. When did that first come to your attention, Mr. Shafer? A. Probably very shortly after my arrival in Washington, in the middle of 1955 or early 1956.

Q. Did you at that time make any investigation or inquire as to the effect of these decisions against oil shale claims on the ground of failure to perform assessment work? A. Yes.

Q. What inquiry or investigation did you make? A. Well, the first inquiry was probably with the Solicitor's office, or was with the Solicitor's office, with a Mr. Bradshaw, Clarence Bradshaw, who was, I think, Assistant Solicitor or Associate Solicitor for Public Lands. It was discussed extensively with him, certain previous documents and cases that he suggested for review were obtained [4919] and looked at, and I think there were discussions certainly with my superiors. The first one would have been Luther Hoffman—Louie Hoffman, and subsequently with Max Caplan, on the effect of these previous contests for failure to do assessment work.

Q. Do you recall inquiry or conversations with any others of your superiors? A. Yes; at various times it was discussed with Ed Woozley.

Q. He is the person you identified earlier as Director of the Bureau of Land Management? A. Yes, he was a Director. It was discussed with other individuals in the Solicitor's office: Frank Cotter at various times. I'm sure that it was discussed with several other people, but not necessarily my superiors.

Q. What instructions, Mr. Shafer, if any, did you receive or answers did you get to your inquiries as to what effect was to be given to these old decisions on assessment with grounds? A. That insofar as issuing patent applications, if the charge of failure to do assessment work was the only charge, it was to be ignored, and had been ignored.

Q. Did you proceed, your office proceed to review oil shale patent applications, consistent with those instructions? [4920] A. Yes.

Q. Were your superiors aware that youroffice was reviewing oil shale patent applications consistently with those instructions?

MR. McKEVITT: I object to that, the form of that question.

(Discussion off the record)

MR. HULBERT: Would you read that question, please.

(Question read.)

BY MR. HULBERT: Q. Mr. Shafer, at any time did you report to your superiors that your office was reviewing oil shale patent applications, consistent with those instructions? A. Yes, many times.

Q. Mr. Shafer, when an application came from the state office, an oil shale application I mean, now, came from a state office to the Director's office, would it include the mineral examination report? A. Yes. If it did not, if it had been inadvertently left out and it came to us for review, we would request the mineral examiner's report.

Q. And in reviewing the application, Mr. Shafer, would you or one of your subordinates read the mineral examiner's field report? A. In detail.

* * * *

[4923] Q. Mr. Shafer, did you give your assistants any instructions with respect to what they should do in any case where they encountered an oil shale patent application involving claims which had previously been the subject of a contest decision solely on assessment work grounds? A. Yes, I think we discussed it many times; and the instructions I gave to them were the instructions I had received, or my understanding of those instructions, that the previous contest, where the contest had been brought solely for failure to do assessment work, would be ignored, and patent would be issued.

Q. Mr. Shafer, I show you a document, copy of a document dated June 15, 1956, and ask you if you recognize the signature. A. I do.

Q. Is that your signature? A. That's my signature.

* * * *

[4926] Q. In the course of the review in your office, would the mineral report which has been re-marked Plaintiff's Exhibit 6 come to your attention? A. Yes, it would.

Q. Would the material in the fourth full paragraph on the second page of the mineral report marked Plaintiff's Exhibit 6 have—

MR. McKEVITT: I object to the form of the question.

MR. HULBERT: Well, I'll try again.

BY MR. HULBERT: Q. Referring you to the second page of the mineral report which has been re-marked Plaintiff's Exhibit 6, let me ask you whether there is a reference there to a prior assessment work decision against the Champion No. 5 claim. A. Yes, there is.

Q. Would the disclosure of the fact of a prior decision, adverse to the claim on that ground, have provided any basis for rejection of the application in your office? A. No.

* * * *

[4931] Q. Whose signature is that? A. Bob May, or Robert F. May.

Q. And he is the gentleman you identified as one of your assistants? A. He was one of my assistants, yes.

Q. Do you know what position Mr. May now holds? A. He is either in Berea, Kentucky, working for the Forest Service at this time, or he has transferred to the Washington office of the Forest Service to be in charge of their mineral activities on national forest lands. Whether he has arrived or whether he is on the way or coming, I don't know, but he will be in Washington shortly.

Q. Can you tell me, Mr. Shafer, whether the note above the signature "Robert F. May" is in Mr. May's handwriting? A. Yes, it is; to the best of my knowledge, yes.

Q. Can you tell us what the reference in that note to "Case file 1337597" refers to? A. Yes. These are old case file numbers or miscellaneous numbers, that referred to previous contests or previous actions brought against this particular claim.

[4932] Q. Would the reference or the note, "Contest 12025," have referred to the contest number of a prior proceeding— A. It would.

Q. —involving this claim? A. It would involve these particular claims.

Q. The rest of the note, as I read it, says, "Has been reviewed for charges regarding assessment work. All appears in order and patent may issue." A. That's correct.

Q. What would you have understood that to mean? A. That Mr. May had reviewed the case for any previous contests, and specifically for contests regarding assessment work. He doesn't indicate whether a contest had or had not been brought, in his note, but he was of the opinion that all was in order; and there was some type of contest pending, as indicated by the reference to Contest 12025.

Q. And you would take this as indicating that Mr. May had reviewed those files?

MR. McKEVITT: I object to the form of that.

BY MR. HULBERT: Q. Would this note, Mr. Shafer, have given you any indication as to whether or not Mr. May had reviewed these files? A. It would.

Q. And what would the indication have been? [4933] A. That he had reviewed the files, the case file pertaining to this particular contest, and that he had satisfied himself as to the contents of these files, and recommended the case for patent.

Q. If Mr. May had acted pursuant to any instructions you had given him, would he have noted that charges other than assessment work had been raised, had they been raised? A. He would. (Simultaneous with:)

MR. McKEVITT: I object to the form of that question, too.

THE WITNESS: I said he would have.

BY MR. HULBERT: Q. Had you given your assistants any instructions as to what they should look for in reviewing those contest files? A. Yes.

Q. Had you given them any instructions as to what totations or information they should convey to you regarding the contents of those files? A. Yes.

Q. What had you instructed them to review? A. Well, to completely review the patent application and the necessary files, or contest dockets, contest cases; and if the only charge in the previous contests or previous actions was one of failure to do assessment work, the case [4934] would be passed for patent. If other charges, such as lack of discovery, fraud, or any other charge had been brought, the case would be examined further and, in all probability, returned to the Colorado Land Office for further action, with our recommendation that this case did not appear to be in order for patent.

Q. Mr. Shafer, if you will recall, can you tell us whether a document called a Minerals Work Sheet would have been part of an oil shale patent application file as it came to your office for review? A. It should have been, yes. That was the procedure.

MR. HULBERT: May I have this document marked, Minerals Work Sheet regarding Mineral Entry C020379 on the G. M. 17 and 18.

(Minerals Work Sheet described was marked as Plaintiff's Exhibit 40 for identification.)

BY MR. HULBERT: Q. Mr. Shafer, directing your attention to the document that has now been marked Plaintiff's Exhibit 40, let me ask you if you can tell me what that is. A. Yes. That's a copy of a Minerals Work Sheet which was ordinarily prepared in conjunction with the Land Office examination and adjudication of a mineral patent application.

* * * *

[4938] Q. Mr. Shafer, you have said earlier that you were instructed that oil shale claims which had been nullified solely on the grounds of assessment work were not, for that reason, to be rejected for patent. Can you

tell us whether any distinction was made in these instructions which you say you received which depended upon the procedural status or posture of the assessment work contest decision?—if I am making myself clear. A. I'm not sure that you are.

Q. Well, let me rephrase or put another question in these terms: Were the instructions given you with respect to the effect to be given to assessment work decisions confined to, for example, assessment work decisions which had been rendered by the Commissioner of the General Land Office, or to decisions which had been appealed to the Secretary, or to any particular categories of these cases, as distinct from others? A. No particular category. The instructions applied across the board to any contest that had been brought for failure to do assessment work.

Q. Did it depend on whether all or less than all of the claimants had been served with process? A. No.

* * * *

[4945]

CROSS-EXAMINATION BY MR. McKEVITT

* * * *

[4949] Q. What was their function? A. At what—?

Q. —with respect to a patent application? A. At what time?

Q. After 1955. A. Their function was to advise the people in the Bureau of Land Management if we raised legal questions and brought the mineral patent application and the question to their attention.

Q. You mean that wouldn't see it unless you would have raised some question? A. Not all the time. Now, there were certain classes of applications, and oil shale was one of them, that Mr. Bradshaw kept a rather close control and had a close personal interest in. I think many of those, if we had any question at all, were discussed with Mr. Bradshaw.

Q. But otherwise, the entire patent application process was a function of your office? A. Function of my office as a staff assistant to the Director and to the Chief of the Division of Minerals.

Q. But you made no final decision with respect to title, for instance? A. No.

* * * *

[4970]

REDIRECT EXAMINATION BY MR. HULBERT

* * * *

[4972] monograph.

Q. Mr. Shafer, in the course of your duties after you came to Washington, did you have occasion to make any thorough study of what mineral examiners in Colorado had been doing previous to that date with regard to checking for old contest decisions against oil shale claims?

THE WITNESS: Would you repeat that, please?

MR. HULBERT: Would you read it back.

(Pending question read.)

A. I don't know whether you would call it a study or not. I was certainly familiar with it and had discussed it with many of the mineral examiners and the Land Office personnel in Colorado.

BY MR. HULBERT: Q. What were these discussions, Mr. Shafer? A. That as far as any previous decisions or previous contests, if they pertained only to the question of failure to perform annual assessment work, they were ignored insofar as issuance of patent was concerned.

Q. Do you know, Mr. Shafer, whether or not, prior to 1956, mineral examiners in Colorado did or did not check to see whether there had been prior contest decisions against oil shale claims? A. Prior to '56? No.*

* * * *

[5176]

PLAINTIFF'S EXHIBIT 313

The Oil Shale Corporation, et al. v. Udall,

Civil Action 8680

Plaintiffs' Interrogatories
and
Defendant's Answers Thereto

1. Int. Identify, by file number, date of issuance, name of lessee and description of the land involved, each oil and gas lease covering any part of the land embraced within any of the mining claims involved in this action which was issued by the United States in reliance upon the established invalidity of the claims, as alleged in defendant's Sixth Defense.

A. It has been impossible to establish whether any employees of the Department of the Interior issuing oil and gas leases specifically did so "in reliance upon the established invalidity of the claims." . . .

6.(a) Int. State whether between 1930 and 1962 any officer or employee of the Department of the Interior ascertained or sought to ascertain, as part of or with respect to processing of any federal oil and gas lease application for lands in Colorado, whether the land was embraced within mining claims for which no patent application was then pending.

A. Defendant does not know, nor does defendant presently intend to submit evidence on this matter.

9.(a) Int. State whether between 1930 and 1962 any officer or employee of the Department of the Interior refused [5177] to issue any oil and gas lease for land in Colorado on the ground that any part of the land applied for lay within a mining claim, where no patent application for the claim was pending.

A. Defendant does not know, nor does defendant presently intend to submit evidence on this matter.

12.(a) Int. State whether between 1935 and 1962 any officer or employee of the Department of the Interior cancelled any oil and gas lease, or any part thereof, for land in Colorado on the ground that part or all of the

leased land lay within a mining claim, where no patent application for the claim was then pending.

A. Defendant does not know, nor does defendant presently intend to submit evidence on this matter.

15. Int. State whether the defendant contends that any lessee under any oil and gas lease identified in answer to Interrogatory No. 1 entered into such lease in reliance upon the invalidity of any claim in suit embracing land subject to the lease.

A. Defendant does not intend to present testimony by any individual lessees on this point. . . .

17. Int. State whether the defendant contends that any lessee under any oil and gas lease, not identified in answer to Interrogatory No. 1, covering any land embraced within any claim in suit entered into such lease in reliance upon the invalidity of the claim.

[5178] A. See answer to 15.

20a. Int. State whether between 1930 and 1962 the Department of the Interior, in connection with the issuance or administration of any oil and gas lease on public lands in Colorado, gave a warranty of title to the leased lands and/or to the oil and gas.

A. Defendant does not know and has no evidence at the present time to indicate that any such warranties were given during the 32-year period designated. . . .

25.(a) Int. State whether between 1930 and 1962 any officer or employee of the Department of the Interior ever refused a request that the Department or the United States undertake an obligation to defend an oil and gas lease for public lands against prior mining claims.

A. Yes.

27. Int. State whether the United States, between 1930 and 1962, ever defended the validity of an oil and gas lease for public lands against prior mining claims.

A. Defendant does not know.

28. Int. If the answer to Interrogatory No. 27 is in the affirmative, state whether it was the policy or practice of the Department of the Interior during such periods so to defend the validity of oil and gas leases on public lands.

A. See answer to 27.

29. Int. If the answer to Interrogatory No. 27 is in the negative, state whether it was the policy or practice of the Department of the Interior during such period to decline or refuse so to defend the validity of [5179] oil and gas leases on public lands.

A. See answer to 27.

31. Int. State whether, between 1930 and 1962, the United States refused or rejected a request by an oil and gas lessee of public lands that the United States defend, against prior mining claims, title to the oil and gas.

A. Yes.

32. Int. If the answer to Interrogatory No. 31 is in the affirmative, state whether it was the policy or practice of the Department of the Interior during such period to refuse or reject such requests.

A. Defendant does not know.

35.(a) Int. State whether between 1930 and 1962 any officer or employee of the Department of the Interior, in connection with processing of an oil shale mining claim patent application for land in Colorado and issuing patents therefor, cancelled any oil and gas lease to the extent that it embraced lands within the mining claims being patented.

A. Yes.

38. Int. State whether defendant contends that any grazing lease or grazing permit covering any part of the land embraced within any of the subject mining claims was issued by the United States at any time in reliance upon the established invalidity of the claims.

A. It has been impossible to establish whether any [5180] employees of the Department of the Interior issuing grazing privileges did so "in reliance upon the established invalidity of any of the subject mining claims.

A. Defendant does not intend to present testimony by any parties holding grazing privileges. . . .

57. Int. State whether (other tnan by issuance of oil and gas leases or grazing leases, licenses, or permits) the United States in reliance upon the established invalidity of the claims in suit administered the land embraced within the claims as being free and clear of plaintiffs' claims, as alleged in defendant's Sixth Defense.

A. The defendant does not know. . . .

62. Int. State whether the defendant contends that any party (other than the United States) to any transaction (other than an oil and gas lease or a grazing permit or lease) involving the lands embraced within the subject mining claims entered into such transaction in reliance upon the invalidity of any of the claims in suit.

A. The defendant does not know. . . .

65.(a) Int. State whether between 1935 and 1962 any officer or employee of the Department of the Interior made inquiry, [5181] in connection with administration (excluding administration of oil and gas and grazing interests) or public land in Colorado for which no mining claim patent application was then pending, whether land involved was embraced within mining claims.

65.(b) Int. If the answer to Interrogatory 65(a) is in the affirmative, identify each occasion of such an inquiry. Include in such identification the serial number, if any, and nature of the interest being administered and the time of the inquiry.

65(c) Int. With respect to each occasion identified in answer to Interrogatory 65(b), state whether the facts bearing upon such inquiry are documentary or other, and, if documentary, identify each document by date, author, subject matter and present custody and location, and if other than documentary, identify by name, present title or position, if any, and present address each person known to possess knowledge of the facts.

A. Defendant does not know. If any evidence of any such inquiries is found, it will be given to the Plaintiffs before trial.

80. Int. State whether the case or other files in Contests 11757, 11759, and 11761 were received in the Denver Colorado Land Office between 1950 and the end of 1961, and if so, the dates or approximate dates of receipt. . . .

A. The records of the Colorado Land Office, Bureau of Land Management indicate the following: 1. Contest 11757 received "6/26/59 case file rec. in LO, chrg. to L&M". [5182] 2. Contest 11759 "6/26/59 Record from

BLM Wash. to St. Supr." 3. Contest 11761 "6/26/59 Record from BLM Wash. to St. Supr."

85. Int. State whether defendant contends that there ever has been or is now any obligation on the part of the owner or owners of an unpatented mining claim located in the State of Colorado on public lands to apply to the United States or any agency or instrumentality thereof for a patent.

A. Defendant does not so contend. . . .

115. Int. Referring to the abtracts of title to the mining claims in suit previously furnished to the defendant by the plaintiffs, in connection with this action, state whether the defendant contends that full record legal title to the claims is not vested in the plaintiffs.

A. The abstract of titles shows that the plaintiffs either obtained deeds from the successors in interest to the original locators or else foreclosed the interest of such successors in intereset by forfeiture proceedings. . . .

124.(a) Int. State whether in 1930, 1935, and subsequent years through 1960, officers and employeee of the Department of the Interior within the Office of the Secretary of the Interior and the General Land Office (Bureau of Land Management) who drafted or reviewed documents, placed their initials or signatures in the upper [5183] right-hand corner or elsewhere on a copy of the document.

A. Examination of some documents from the department's file for 1930, 1935, and subsequent years shows that at least in some instances, initials were placed on the file copy of various documents. Presumably, these initials were placed on the copies by persons who either drafted or reviewed it, or by persons to whom the copy was routed for information purposes.

126.(a) Int. Reference is made to the attached copies of first pages of Interior documents dated respectively June 7, 1930, November 13, 1930, May 26, 1933, June 16, 1939, May 21, 1943, February 14, 1944, May 3, 1946, and August 29, 1950, one or more of which bear the following names on the upper right-hand corner: Altizer, Barash, Bradshaw, Burlew, Chapman, Clawson, Cummiford, Ouckworth, Duncan, Edelstein, Edwards, Fahy, Friedman,

Finney, Fortas, Funck, Glavin, Giller, Goerner, Hilton, Hoffman, Hom, Howell, Hudson, Johnson, Margold, McDowell, Mendenhall, Muck, Obenchain, Sears, Speck, Stabler, Thomas, Towner, Wasserman, Willy, and Wolfsohn. For each of the preceding names, state: the full name of the individual concerned; the title, position, or functions of the individual within the Department of the Interior, as of June, 1930, or such later date on which he first became an officer or employee of the Department; any and all subsequent titles, positions, or functions of the individual within the Department [5184] of the Interior, through 1960; and the period of time the individual held each such title or position or performed such functions.

A. The materials requested in this interrogatory are being checked and will be furnished Plaintiffs' counsel as soon as available. The supplemental information furnished by the defendant in answer to this interrogatory has been offered as plaintiffs' Exhibits 306 and 307.

[5185]

PLAINTIFF'S EXHIBIT 314

Penelope Chase Brown vs. Udall, Civil Action No. 9202

Plaintiffs' Interrogatories
and
Defendant's Answers Thereto

3. Int. State whether the defendant contends that the United States at any time took any action or entered into any transaction involving the land embraced within the claims in suit in reliance upon a belief that any of those claims was invalid because of the 1931 or 1932 decisions in Contest 12039.

A. . . . . It is not known whether any action was taken specifically in reliance on the 1931 and 1932 decisions. . . .

10. Int. State whether defendant contends that any party other than the United States has at any time entered into any transaction involving land embraced within any of the claims in reliance upon a belief that the

claims were invalid because of the 1931 or 1932 decisions in Contest 12039.

A. Defendant does not know what may have motivated third parties into entering "into any transaction involving land embraced within any of the claims."

14. Int. State whether there is in defendant's possession, or to the defendant's knowledge, in existence, any writing subsequent to the 1932 decision in Contest 12039 signed by any of the plaintiffs or their predecessors in interest which defendant contends [5186] constitutes an admission of the validity or effect of or an acquiescence in the 1931 or 1932 decisions in Contest 12039.

A. Defendant does not know. . . .

20. Int. State whether at the date of the Manager's decision of February, 1962 rejecting the application for patent on the claims in suit filed in 1955 any recommendation was then being made by any employee of the Department of the Interior that patent be rejected on the claims in suit for any reason other than the 1931 and 1932 decisions in Contest 12039.

A. No particular recommendations were then being made dealing specifically with the subject claim.

34. Int. State whether defendant contends that full record legal title to the Oyler claims does not appear in the plaintiffs.

A. . . . . Defendant does not deny that plaintiffs have acquired whatever interest the original locators had to convey.

40. Int. Does the defendant contend that no oil shale claim has been patented by the Department of the Interior with knowledge of prior assessment work decisions adverse to the claim?

A. The answer to this interrogatory is no—assuming that the term "Department of the Interior" includes any and all of its employees.

[5187] 41. Int. Referring to the decision dated February 16, 1962, and signed by Dale R. Andrus, Land Office Manager, rejecting patent application C-012327, state (a) whether prior to February 16, 1962, any notice was given to the patent applicant, that the Manager or anyone else in Interior was considering rejecting the appli-

cation by reason, in whole or in part, of Contest 12039, (b) whether prior to February 16, 1962, the patent applicant was afforded any opportunity to present evidence or legal argument on any question whether the patent application should be rejected in whole or in part by reason of Contest 12039.

A. The answer is no. . . .

43. Int. State whether defendant contends that any grazing lease or grazing permit covering any part of the land embraced within any of the subject mining claims was issued by the United States at any time in reliance upon the established invalidity of the claims.

A. It has been impossible to establish whether any employees of the Department of the Interior issuing grazing privileges did so "in reliance upon the established invalidity of the claims." . . .

[5188] 48. Int: State whether the defendant contends that any grazing lessee or permittee under any grazing lease or permit identified in answer to Interrogatory No. 44 entered into such lease or permit in reliance upon the established invalidity of any of the subject mining claims.

A. Defendant does not know whether anyone holding grazing privileges relied on the established invalidity of the mining claims. . . .

52. Int. State whether (other than by issuance of grazing leases, licenses, or permits) the United States in reliance upon the established invalidity of the claims in suit administered the land embraced within the claims as being free and clear of plaintiffs' claims.

A. The defendant does not know. . . .

57. Int. State whether the defendant contends that any party (other than the United States) to any transaction (other than a grazing permit or lease) involving the lands embraced within the subject mining claims entered into such transaction in reliance upon the invalidity of any of the claims in suit.

A. Defendant does not know whether any third party relied upon the invalidity of the mining claims. . . .

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* * * *

[5958-A]

DEFENDANT'S EXHIBIT A.

Contest 12039

* * * *

[6010]

Department of the Interior
In The United States Land Office

At Denver, Colorado, Before the Register.

THE UNITED STATES OF AMERICA, PLAINTIFF

—*vs*—

THE INDEX SHALE OIL COMPANY, Its Agent, Trustees and Receiver, and others, DEFENDANTS

Contest No.12039, involving the Oyler Nos. 1 to 4, inclusive oil shale placer mining claims.

Deposition of Warren R.Sholes.

Be It Remembered that on this 5th day of October, 1931, the deposition of Mr.Warren R.Sholes was taken before me,

Harry A. Rogers

Clerk of the District Court of the First Judicial District of the State of Idaho,in and for the County of Shoshone, the officer who has subscribed the certificate hereto appended, and that such deposition was taken in the office of said Clerk in the County Courthouse in the City of Wallace, County of Shoshone,State of Idaho,beginning at the hour of 10 o'clock in the forenoon of said day. That before testifying,the said witness was by me sworn according to law,as more particularly appears from the certificate hereto appended, and that such witness testified as follows,in response to the following interrogatories:—

[6011] Department of the Interior In the United States Land Office

At Denver, Colorado, Before the Register.

The United States of America, Plaintiff, v. The Index Shale Oil Company, Its Agent, Trustees and Receiver, and others Defendants.

Contest No. 12039, involving the Oyler Nos. 1 to 4, Inclusive, oil shale Placer Mining Claims.

Direct Interrogatories to be Propounded to Warren R. Sholes, Esq., A Material Witness for the Plaintiff.

* * * *

[6015] Interrogatory 3: Describe generally the character of your work as a mining engineer of the General Land Office with respect to the examination of lands for purposes and classification,and of mining locations embraced in mineral applications pending before the Department of Interior,or subordinate offices and unapplied for mining locations,with respect to your duties in relation thereto.

A: With respect to the examination of lands for purposes and classifications,my examination is to determine the mineral value of the land,so that portions determined as non-mineral,could be patented to private interests under certain land grants made by Congress.

Int. # 3 A. Also to determine more exactly mineral or non-mineral portions of lands within existing reservations, where some non-mineral location or entry conflicts. As to mining locations embraced in mineral applications pending before the Department of the Interior or subordinate offices, my examination is for the purposes of determining if the U.S. Mining Laws have been complied with as to whether a valid discovery of mineral has been made and the expenditure of five hundred dollars in labor and materials has been placed thereon. As to mining locations for which patent has not been applied the examination is for the purpose of determining if those locations are bona fide,especially if they occur on lands reserved for any public purpose. The examination covers the annual assessment work,the matter of valid discovery, proper staking and validity of title.

* * * *

[6016] Interrogatory 10: State the purpose and object of the examination made by you of the Oyler claims Nos.

1 to 4,inclusive,described in a previous interrogatory.

A: To determine whether the claims were valid under the mining laws as to discovery,staking,annual assessment work,etc,with the end in view to clear title thereto, if such were not the case. The claims are embraced in a Naval Oil Shale Reserve.

* * * *

Interrogatory 12: State whether or not during the course of your examination you surveyed and tied in the position of all cuts,tunnels,shafts and other mining excavations or improvements found by you within the exterior lines of the four Oyler claims,Nos.1 to 4,inclusive.

A: I did.

* * * *

[6610]

DEFENDANT'S EXHIBIT D

Contest No. 028751

* * * *

[6651]

Secretary of the Interior
U. S. Department of the Interior
Washington 25, D. C.

Director, Bureau of Land Management
U. S. Department of the Interior
Washington 25, D. C.
Colorado Land Office

Bureau of Land Management
U. S. Department of the Interior
Denver, Colorado

Appellate Proceeding A-29560 5.22b

In the Colorado Land Office. M.E. C-028751

IN THE MATTER OF THE APPLICATION OF BARNETTE T. NAPIER, OF ARCADIA, CALIFORNIA, and GRACE A. SAVAGE, OF DOWNEY, CALIFORNIA, and JOAN L. SAVAGE, OF GRAND VALLEY, COLORADO, and MAUDE B. FARNUM, ST. CLAIR NAPIER CATLIN, WILLIAM H. FARNUM, JR. and JOHN R. FARNUM, ALL OF GLENWOOD SPRINGS, COLORADO, FOR UNITED STATES PATENT FOR THE FOLLOWING NAMED PLACER MINING CLAIMS, to wit:

The Southwest Placer Mining Claim, S½SW¼ and NW¼SW¼,
The Northwest Placer Mining Claim, N½NW¼ and SW¼NW¼,
The Northeast Placer Mining Claim, NE¼,
The Southeast Placer Mining Claim, SE¼,
All in Section 27, Township 7 South, Range 98 West of the 6th Principal Meridan.

Motion to Vacate the Colorado Land Office Manager's Decision of February 16, 1962, Or, Alternatively, To Vacate and Remand for Full Hearing After Notice of Matters of Facts and Law Relied Upon By The Manager and Asserted Against the Applicants

[6652] The applicants in the above-listed mineral patent application proceeding, by their undersigned counsel, do hereby move, petition and request that the decision of the Manager of the Colorado Land Office of February 16, 1962, be vacated, or alternatively, that it be vacated and that the matters covered thereby be ordered promptly set for a full hearing after notice of matters of fact and law asserted against applicants in compliance with the due process clause of the Fifth Amendment to the United States Constitution, the provisions of the Administrative Procedure Act, 5 U.S.C. Sections 1001 through 1011, and, in particular, with Sections 1004, 1005, 1006, 1007 and 1010, and with the published regulations of the Department of the Interior, for the reasons which follow:

I. The Decision Was Unauthorized And Erroneous As A Matter Of Law.

A. The Prior Decision Relied upon by the Manager was Rendered Without Personal Jurisdiction over the True Owners of the Mining Claims.

B. The Prior Decision was Rendered Without Subject-Matter Jurisdiction over the Questions Presented Therein.

C. The Prior Decision was Not Final, and the Contest in Which That Decision was Rendered Was Thereafter Decided and Closed Adversely to the Government.

D. The Department of the Interior Waived any Benefit that May Have Accrued as a Result of the Prior Decision.

[6653] E. The Department Has Established a Rule With the Force of Law that the Prior Decision Had No Effect on Mining Claims.

F. This Rule Has Not Validly Been Changed.

G. No Change of This Rule Can be Given Retroactive Effect Consistently with the Statutory and Constitutional Limits on the Department's Authority.

H. The Manager Rendered the February 16, 1962, Decision in Excess of his Authority Under the Department's Own Rules, the Administrative Procedure Act, and the Fifth Amendment, since He Purported to Adjudicate the Validity of Applicants' Mining Claims.

I. The Reasons and Authorities Already Presented in the Statements of Reasons and Briefs on Appeal in the Proceedings Before the Director of the Bureau of Land Management and the Secretary are Incorporated Herein by Reference.

II. The Department Of The Interior's Own Published Regulations Were Violated By The Failure To Provide A Hearing On The Questions Decided In The Manager's February 16, 1962, Decisions.

The Department's published rules provide for the initiation of Government contests for causes affecting the legality or validity of any mining. It is apparent from an analysis of these rules, contained in Subtitle B of Title 43 of the Code of Federal Regulations, that all causes affecting [6654] the basic validity of a mining claim must be presented in a contest or a judicial suit,

and that a land office manager lacks authority to decide such causes in contested cases. It is true that a manager's authority does not seem to be spelled out precisely in the published rules. However, the limits of his authority are implicit in these rules and in the governing statute.

Section 28 of Title 30 of the U. S. Code contains the statutory procedural requirements for obtaining patent. Under this section and the applicable regulations, primarily 30 C.F.R. Sections 185.38-.72, Sections 185.78-.83, an application for patent must be filed in the land office having jurisdiction over the land for which a patent is desired. The statute and these regulations specify in considerable detail what documents and proofs must be submitted by a patent applicant, and obviously contemplate that a manager of the land office will decide in the first instance whether the submitted documents and proofs meet the requirements of the statute. They also contemplate that if a manager decides the submitted proofs are in the proper form and satisfy the statutory and regulatory requirements, he will process the application and upon request issue a patent, provided that there is no pending adverse charge or objection to the validity of the applicant's mining claims or locations. See, e.g., 43 C.F.R. Sections 185.60, 185.62. When such adverse charges or objections are raised and are contested, a manager clearly is not to pass [6655] upon the merits of the challenges but is required to refer adverse claims to judicial proceedings and contests to hearing examiners. See, e.g., 43 C.F.R. Sections 185.80, 221.65 (b).

The basis of the February 16, 1962, decision of the Land Office Manager in Denver was by no means a question of the formal adequacy or sufficiency of the patent applications which he rejected. As demonstrated in part IIIB, infra, it was a question of the validity of the placer mining claims themselves, a question which he was not called upon or authorized to decide.

Accordingly, the Department's own rules required that the questions passed upon by the Manager should not and could not properly have been decided by him. Compliance with the rules would have required that a contest be

initiated in order to determine the effect upon the applicants' mining claims of the default decision in Contest No. 12972. See 43 C.R.F. Section 221.67. Such a contest would have been instituted by the filing of a complaint, which would have stated, among other things, the facts and law constituting the grounds of contest. The applicants then would have been entitled to file an answer to the complaint and the Manager would have been required to refer the case to an examiner for a hearing (unless all parties waived a hearing). See 43 C.F.R. Sections 221.64-65. The plain failure to follow the Department's own rules has prejudiced the applicants and requires that the Manager's decision be vacated and a proper hearing be accorded applicants before the question [6656] of the validity of their mining claims is decided.

III. The Administrative Procedure Act Applied To The Actions Of The Colorado Land Office Manager And The Provisions Of That Act Required That The Adjudication He Made Be Determined On The Record After Timely Notice And Opportunity For An Appropriate Hearing.

A. The Administrative Procedure Act Applies to Proceedings to Determine the Validity of Mining Claims. The Department has held in United States v. O'Leary, 63 I.D. 341 (1956), that the due process clause of the Fifth Amendment requires a hearing in all cases adjudicating the validity of a mining claim, and that "the hearing requirements of the Administrative Procedure Act are applicable to hearings on the validity of mining claims." (At 345.) This decision was correct and was adopted in both respects by the United States Court of Appeals for the Ninth Circuit in Adams v. Witmer, 271 F.2d (1958). Moreover, the Department's regulations recognize the applicability of the Act to the Department of the Interior, see 43 C.F.R. Sections 221.51-221.77, as did Reorganization Plan No. 3, Sections 1 and 2, effective May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, (see 5 U.S.C. Section 481, note following), which, in transferring all functions of the Department of the Interior directly to the Secretary of the Interior, expressly ex-

cepted the functions vested in the hearing examiners by the Administrative Procedure Act.

[6657] B. The Proceedings Presently Under Review Purport to Adjudicate the Validity of Mining Claims. Since it is established by Department, judicial, and congressional decision that the hearing requirements of the Administrative Procedure Act apply to proceedings to adjudicate the validity of mining claims, the chief question here is whether the present proceedings—or more properly the decision rendered by Manager Andrus—is such an adjudication. The Manager's decision rests in the first instance on a certain cited decision rendered by the Department in 1931. In relying as he did on the earlier decision as the basis for application of a supposed Department policy of finality, the Manager necessarily both asserted and determined their original and continuing validity.

The precise question on this motion therefore is whether a proceeding to determine the validity and effect of a decision holding mining claims invalid is itself an adjudication. In these cases, where the prior adjudications of invalidity were embodied in judgments or decisions entered on default, the answer must clearly be in the affirmative. A determination inter partes of the validity of an earlier default judgment requires decision for the first time of matters of fact and law which were not and could not have been decided in the default proceeding. It is elementary constitutional law that a proceeding on default is valid only if service of process was properly accomplished so that personal jurisdiction existed, and only if the decision-making body possessed power and authority over [6658] the matters in issue. It is equally elementary constitutional law that a decision rendered on default cannot conclude those issues; they are open when the benefit of the default decision is subsequently first claimed by either party against the other.

It is apparent that what the Manager has attempted to do in his decision is to conclude the very matters of fact and law which were not and could not have been decided in the original proceeding because of the absence of the applicants' predecessors in title, and which are

indispensable to its effectiveness. Without a hearing, and therefore once again in their absence, he has purported to adjudicate the facts and law against them.

Had there otherwise been room for doubt that the Manager's decisions purport to conclude not only matters of law but also conclude questions of fact, the Solicitor's letter of May 20, 1963, to Cleary, Gottlieb, Steen and Hamilton, counsel for Tell Ertl and others, in Appellate Proceeding A-29560, resolved all doubt. In the last paragraph of that letter, the Solicitor states that ". . . the above-numbered applications of your clients have been consolidated in this proceeding with certain others involving *identical questions of fact and law.*" (Emphasis supplied.)

We believe that the Solicitor's letter gives special emphasis to the fundamental error in the Manager's decisions. It reveals clearly that the very same agency which in 1931 purported on its own motion and in default of the appearance of [6659] applicants' predecessors to determine its own jurisdiction, has now, despite the fact that applicants are here, purported to determine those issues without affording them notice and an opportunity to be heard. Despite its own independence of the interested parties, not even the very same court which rendered a default judgment would regard its original determination of the adequacy of jurisdiction as precluding the defaulted party when the judgment is subsequently asserted against him. Applicants find it inexplicable that an officer of the Department, which was the very agency which first asserted the invalidity of these mining claims, should have thought that he had the power to conclude these issues without affording applicants notice and an opportunity to be heard.

While it is elementary that applicants would have been entitled to compliance with the Administrative Procedure Act, even if the only questions involved were questions of law (whether or not within the special administrative competence of the Department as a law maker), it is plain that on the narrowest possible view of the issues which the Manager decided there were complex questions of historical jurisdictional fact. Moreover, applicants are

not confined to the narrowest possible view. A great variety of issues of fact and law would have been put in issue had notice and hearing been afforded it, and those matters will be in issue at the hearing which it now requests. A brief partial summary of the essentially factual propositions put in issue by the Manager's decisions and which [6660] will be in issue in the hearing now requested is attached hereto as Exhibit A.

C. The Decisions of the Manager Were Rendered in Violation of the Administrative Procedure Act. It requires no argument to establish that the Manager's decision adjudicating applicants' mining claims to be invalid was rendered in violation of substantially every provision of the Administrative Procedure Act. Not only does Section 5 of the Act require that there be a hearing with timely notice of its location, it requires further that notice be given (inter alia) of "the matters of fact and law asserted." The requirement that applicants be given full and fair notice of the claims asserted against them is of constitutional origin and dignity.

The right to a hearing embraces not only the right to present evidence but also a reasonable opportunity to know the claims of the opposing party and to meet them. The right to submit argument implies that opportunity; otherwise the right may be but a barren one. Those who are brought into contest with the Government in a quasi-judicial proceeding aimed at the control of their activities are entitled to be fairly advised of what the Government proposes and to be heard upon its proposals before it issues its final command. Morgan v. United States, 304 U.S. 1 (1938).

Moreover, the Act requires that the hearing be conducted not by an officer of the Department of the Interior, such as the Manager, but rather by a hearing examiner appointed in accordance with Section 11. Decisions such as the Manager's wholly defeat both the independence of tribunal and the separation of functions contemplated by the Act.

[6661] The list of violations of the Act could be greatly lengthened, but to do so would serve no purpose here. The Department is fully familiar with the requirements

of the Act. It has to all appearances intended to comply with them in its regulations (discussed in Part II, supra) governing "Private Contests and Protests" and "Government Contests," 43 C.F.R. Sections 221.51 through 221.76.

D. The Rendering of the Manager's Decision Without Notice and Opportunity for a Hearing Cannot Be Justified Under the Administrative Procedure Act or the Department's Regulations as Permissible "Official Notice." Applicants who have had no notice or adversary have no way of knowing by what arguments the Department would seek to justify the Manager's failure to comply with its proper hearing procedures. Because administrative agencies familiarly take limited official notice of matters contained in their records, it has seemed to us possible at least that the Manager has fallen into error by assuming that he could look to records on these basic questions, make the determinations that are here disputed and thereafter comply with the Act by affording the applicants "on timely request . . . an opportunity to show the contrary." A.P.A. section 7(d), 5 U.S.C. Section 1006(d); see 43 C.F.R. 221.100.

Section 7 of the Act and Section 221.100 of the Regulations cannot be so interpreted. Both contemplate the taking of official notice and subsequent refutation only where in the language of Section 7, "any agency decision rests on [6662] official notice of a material fact not appearing in the evidence in the record . . ." Here we have no record, no evidence and no hearing. To justify what the Department has done on official notice grounds would be to assert that the narrow official notice exception (Section 7(d)) from the general requirement that all material evidence be properly introduced at the hearing modifies the fundamental requirement of Section 5 (a) that persons entitled to a hearing shall be timely informed of its time, place, nature, authority, and—most important here perhaps—the matters of fact and law asserted. Even now an opportunity to rebut would leave applicants uninformed of the claims of a "party" which has yet to make itself apparent, and therefore unequipped to make any adequate defense.

E. The Procedural Defects Under the Department's Regulations and the Administrative Procedure Act in the Manager's Decision Cannot be Cured Without Reversal or Vacation of Them. Section 221.76 of the Department's Regulations and Sections 5(c) and 8(a) of the Administrative Procedure Act both require that the initial decision in any case of adjudication be made by the hearing examiner who presided at the hearing or on the record there made. It follows without more that applicants cannot be remitted to any hearing which is not de novo, and the Manager's decision, if not reversed, must be vacated.

IV. The Due Process Clause Of The Fifth Amendment Requires That Adequate Notice Be Given And A Hearing Be Held Before A Final Order Adjudicating Applicants' Mining Claims To Be Invalid Can Be Entered.

[6663] Although it is applicants' position that the Department's own rules and the Administrative Procedure Act preclude affirmance of the Manager's decisions and there should be no need to reach Constitutional questions, it is apparent that the due process clause assures applicants and the other oil shale claimants much more in the way of procedural fairness than they have so far been accorded. There is, of course, a relationship between the requirements of the Administrative Procedure Act and those of due process. As the Supreme Court said in United States v. Morton Salt Co., 338 U.S. 632, 644 (1950), the Act was framed to guard against excesses of administrative zeal, and imposed procedural standards that were thought by its draftsmen to be much stricter than those imposed by the due process clause. Thus, it seems clear that any procedural irregularity that raises a significant Constitutional question must raise a substantial question whether the Administrative Procedure Act has been complied with. In any event, there is little doubt that affirmance of the Manager's decisions would violate the due process guaranty.

The basic requirements of procedural due process for decision of an essentially adjudicatory question have been concisely stated by Chief Justice Hughes in Morgan v. United States, 298 U.S. 468, 480-81 (1936):

There must be a full hearing. There must be evidence adequate to support pertinent and necessary findings of fact. Nothing can be [6664] treated as evidence which is not introduced as such. . . . The requirement of a 'full hearing' has obvious reference to the tradition of judicial proceedings in which evidence is received and weighed by the Tryer of the facts. The 'hearing' is designed to afford the safeguard that the one who decides shall be bound in good conscience to consider the evidence, to be guided by that alone, and to reach his conclusion uninfluenced by extraneous considerations which in other fields might have play in determining purely executive action. The 'hearing' is the hearing of evidence and argument. If the one who determines the facts which underlie the order has not considered evidence or argument, it is manifest that the hearing has not been given.

Accord, Republic Aviation Corp. v. National Labor Relations Board, 324 U.S. 793, 799-800 (1945); Interstate Commerce Commission v. Louisville and Nashville RR, 227 U.S. 88, 91, 93 (1913).

The applicants have so far not only been denied a hearing, they have been denied the almost equally important Constitutional right (which is usually obtained in connection with a hearing) of notice of the matters of fact and law asserted against them, which notice should be provided a reasonable amount of time before a decision is rendered. See e.g., Crowell v. Benson, 285 U.S. 22, 47-48; United States v. Libby, McNeill & Libby, 107 F. Supp. 697 (D. Alaska 1952); Annotation, 99 L. Ed. 460.

The applicants have been substantially prejudiced by the failure of the administrative proceedings that have occurred up to the present to observe the minimal guaranties inherent in Constitutional due process. Lacking an adversary, [6665] they have also lacked notice of the matters of law and fact which have been asserted and determined against them. No hearing has been held and no evidence has been properly introduced to sustain the decisions of the Manager. Moreover, no opportunity has been provided for the applicants to present evidence in their own behalf. They have had no opportunity to question, analyze or rebut—or even to know—what facts the

Manager relied upon in ruling against them. Only if the Secretary now moots this request for a hearing by outright reversal of the Manager's decisions, can this request for a hearing properly be denied.

V. This Motion Should Be Granted By The Secretary.

The issue of invalidity of the decisions rendered by the Manager is before the Secretary in the pending consolidated appeals. This motion is the appropriate method for the seeking and granting of the subject relief because there is no provision made in the Department's regulations for applications for hearings after decisions such as those moved against. 43 C.F.R. Section 221.6 is inapplicable because by its terms it applies to limited factual hearings "on appeals" and the hearing requirements here stated cannot be satisfied except by a hearing in every sense de novo, and because a Field Commissioner before whom hearings "on appeal" are to be held is not a qualified hearing examiner since the function of the Field Commission was transferred to the Secretary by Reorganization Plan No. 3 as set forth above.

[6666] The motion should be granted as to either of its alternative prayers for relief for reasons also of substantial fairness since such a grant would expedite the final determination of the matters in question.

Lesher, Schmidt & Van Cise

By Richard M. Schmidt Jr.
425 Midland Savings Building
Denver 2, Colorado
Attorneys for Applicants

[6667]

EXHIBIT A*

Offer of Proof

Essentially Factual Propositions That A Litigant Wishing To Support The Andrus Decision of February 16, 1962, Should, Among Other Things, Have To Establish To Make Out A Prima Facie Case Of Invalidity Of The Oil Shale Claims Involved Therein.

1. For a litigant to show that any prior default decision by its own force invalidated an oil shale claim, he must show,[1] among other things, (1) who the true owners of the claims were at the time service of process was attempted, (2) that the true owners were served with process, (3) that service was effected in accordance with the then applicable provisions for service,[2] (4) that the tribunal rendering the decision had subject-matter jurisdiction or administrative adjudicatory authority over the matters raised by the complaint before it, which includes a showing of precisely what was alleged, (5) that the decision relied upon was a final decision to which the rendering tribunal intended to give conclusive effect, rather than an essentially interlocutory order that was subject to being disregarded later by that tribunal.

[6668] 2. For a litigant to show there has been acquiescence[1] in a decision on the part of claimants or their

[1] Under Section 7(c) of the Administrative Procedure Act the proponent of an order has the burden of proof, a rule consistent with judicial practice. But regardless of who bears the burden of establishing the propositions listed hereafter in the text, those factual propositions would be at issue at the adjudicatory hearing we request.

[2] A closely related essentially legal question is whether the applicable provisions for service were provided by the Rules of Practice, Circular No. 460, or some other directive.

[1] "Acquiescence" is not a well-defined legal doctrine, and the factual propositions one relying upon a charge of acquiescence must establish depend of course on how "acquiescence" is defined. The exact contours of the factual issues that would be presented at a hearing cannot now be determined, since the Government has not asserted or explained what the Manager means by "acquiescence." If "acquiescence" as used in the February 16, 1962 decisions

predecessors in title and that during that acquiescence rights have been acquired which should preclude assertion of the oil shale claims, he should have to show, among other things, (1) that the decision was made known to the true owners of the claims, (2) that the true owners were under a duty to object to the decision, (3) that the litigant had, in good faith and for a valuable consideration, acquired an interest in the lands covered by the claims, (4) what sort of interest the litigant had acquired, (5) that the litigant's interest was inconsistent with the interest asserted by the oil shale claimants, (6) that the oil shale claimants or their predecessors actually knew that the litigant was acquiring such an interest and had an opportunity to inform the litigant of the oil shale claim before the litigant parted with whatever consideration was paid for his interest,[2] (7) that the litigant was unaware of an assertion of the oil shale claims when he acquired his interest in the land.

[6669]

Essentially Factual Propositions That Claimants Presently Expect To Be Able To Establish In Re-Buttal Of Any Prima Facie Case.

1. If after hearing of the facts and law the personal and subject-matter jurisdiction of the tribunal rendering the decision in Contest No. 12972 is established, the oil shale claimants expect to be able to establish, among other matters (1) that the Commissioner of the General Land Office and the Secretary of the Interior expressly decided and agreed in June of 1930 that all prior proceedings for failure to do assessment work against claimant's oil shale claims (which included default decisions

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can possibly have the effect of destroying possessory title to land, or of justifying an administrative policy of "finality" proof of acquiescence should involve at the very least establishing the factual propositions set forth in the text immediately following.

[2] A related legal issue is whether the effect of such a course of conduct would be to destroy a mining claimant's entire possessory title, would simply be to subject that title to whatever interest the other party had acquired in the land, or would be to leave the claim unimpaired.

in 1928 against all the claims in their entirety) were of no effect and were void, (2) that in tacit recognition of the nullity of the prior proceedings, new Government challenges for failure to do assessment work, were directed and made against the claims previously defaulted, such challenges allegedly having been made before resumption of assessment work, (3) that the Commissioner and the Secretary intended to and did waive any benefit that might have accrued to the Government as a result of the default decisions in 1928 and established the invalidity of the prior decisions, (4) that Contest No. 12972 was expressly decided and closed adversely to the Government in 1935, (5) that authorized officers of the Department in 1935 and thereafter intended to and did waive any [6670] benefit that might have accrued to it as a result of default decisions in the contests (6) that the Department of the Interior has by a long and consistent (until February 16, 1962 decision) course of conduct established a rule with the force of law that all the government contests which charged only failure to do assessment work were of no effect regardless of default decisions therein, (7) that this rule or practice was widely known in the areas containing oil shale deposits involved herein, (8) that this rule has not been changed in accordance with the Federal Administrative Procedure Act,[1] (9) that the present claimants who acquired their interest in the claims after the contest was closed in 1935 are bona fide purchasers without notice of the default decisions, (10) that since 1935 the Government has induced the claimants and their predecessors to make substantial expenditures on the oil shale claims, for the benefit of Government geological and mining studies, and that implicit in such inducements was a recognition of the validity of the oil shale claims, (11) that the Government has lost any undivided interest in the claims it might have acquired, by its failure to contribute toward the assessment expenditures made by the claimants, which

[1] A related legal question is whether a change of this rule could be given retroactive effect consistently with the statutory and constitutional limits on the Secretary's power.

contribution was timely demanded in accordance with 28 U.S.C. Section 30, in a valid judicial proceeding in the Colorado courts, which proceeding vested, in accordance with federal law, full possessory title in those who had made the assessment work expenditures or who made timely contribution thereto.

[6671] 2. If a prima facie showing is made out of sufficient acquiescence to warrant subjecting the oil shale claims to an interest or interests of an adverse litigant, the claimants expect to be able to establish (1) that since 1935 claimants and their predecessors have made substantial expenditures to improve and develop the oil shale claims and that their activities in developing these claims were open and notorious and matters of common knowledge, (2) that the lands claimed have, at all times since the locations were made, been regarded as valuable for oil shale by claimants and their predecessors and by the Government as well, (3) that the 1927-35 contest proceedings over failure to do assessment work have at all relevant times been regarded by all parties concerned as void, (4) that no one could justifiably rely on the default decisions in those contests, since, among other things, the Department of the Interior repeatedly stated that the decisions were void and of no effect on unpatented placer mining claims and since the Department issued patents to many thousands of acres of oil shale land to claimants whose interests had been declared null and void in the abortive contest proceedings, (5) that no parties who assert an interest in the oil shale lands have or claim any valid interest in the oil shale mineral deposits, (6) that all such persons actually knew when they acquired their interests that the land was subject to unpatented oil shale mining claims, (7) that the oil shale claims have been properly recorded and matters of public record in Colorado since 1920 or [6672] 1919 and that all those who subsequently acquired interests in the lands had constructive notice of the oil shale claims, (8) that there is no necessary inconsistency between the oil shale claimants' intended use of the lands, commercial produc-

tion of oil from oil shale, and the present uses of the lands by others who claim an interest in this.

Lesher, Schmidt & Van Cise

By Richard M. Schmidt Jr.
425 Midland Savings Building
Denver 2, Colorado
Attorneys for Appellants

* * * *

[6774] To: Land Office Manager

United States
Department of the Interior
Bureau of Land Management
Colorado State Office
Area 3

Mineral Report

Mineral Patent Application
of
Maude B. Farnum, et al.,
for the
Southwest Oil Shale Placer Mining Claim
Northwest Oil Shale Placer Mining Claim
Northeast Oil Shale Placer Mining Claim
Southeast Oil Shale Placer Mining Claim
(Title)
Lands Involved
Garfield County, Colorado
6th Principal Meridian

T. 7 S., R. 98 W.,
Sec. 27.

cc: Director, U.S.G.S.
Washington, D. C.

January 27, 1960 (Date)

By Ralph G. Spengler
Warren R. Sholes
James McIntosh
Approved
Valuation Engineers (Mining)

J. Elliott Hall
Land and Minerals Officer

[6775]

* * * *

Recommendations: 1. The E½E½NE¼ should be withdrawn from the patent application. 2. All else being regular, the claims should proceed to patent.

* * * *

[6776] These claims and the Last Chance group (previous locations on the same land) were contested by the Government under the following charge:

"That annual assessment work to the value of $100 was not performed upon each or any one of the Northwest, Northeast, Southeast and Southwest Oil Shale Placers for the year ending July 1, 1931, and that work had not been resumed on said claims July 6, 1931, when challenges to the validity thereof were posted thereon on behalf of the United States."

[6777] No other charges were used. The charge was answered and a hearing was held in Glenwood Springs. The charge against the Southwest Placer Claim was dismissed. The remaining claims were declared null and void, by letter "N" 1424895 CRB, dated December 28, 1931—Contest 12972 (United States vs Mrs. B. T. Napier, et al.)

The Last Chance Nos. 1 to 4, inclusive, were declared null and void to the extent of the interests of eight of ten parties of record by letter "N" of September 9, 1931, 1406941 WST—Contest 12615.

* * * *

Clerk's Note: Defendant's Exhibit K, Docket Sheet, Minutes of Proceedings, etc., is in a separate Exhibit Book.

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[7486]

DEFENDANT'S EXHIBIT L

The following material is attached:

1. The prefatory page and pages 21, and 22, from a Synopsis prepared for the opening meeting of the Department of the Interior Oil Shale Advisory Board.

* * * *

[7488]

United States Department of the Interior

The Oil Shale Policy Problem

A synopsis prepared for the opening meeting of
the Department of the Interior
Oil Shale Advisory Board
July 7, 1964

* * * *

[7515]

Description of ownership status of the
Green River oil shales

The oil-shale deposits that are currently of primary interest in the United States are those in the Green River Formation, which extends over large areas of Northwestern Colorado, East Central Utah and Southwestern Wyoming (Figure 4). The shaded areas represent approximately 2,600 square miles of Green River Formation in Colorado, 4,700 square miles in Utah and 9,200 square miles in Wyoming. Although the area in Colorado is smaller than that in either of the other two States, the oil-shale deposits in Colorado are thicker and richer.

According to recent estimates the shale oil potential of the deposits in the three states is about two trillion barrels. The estimated oil potential of the principal oil-shale deposit in the Colorado Piceance Creek Basin includes about 500 billion barrels in shale yielding more than 25 gallons per ton and about 800 billion barrels in shale yielding between 10 and 25 gallons, or a total of 1.3 trillion barrels in combined high and low grade oil shale.

The estimates represent the amount of shale oil in place as indicated by computation from assays of samples sections.

To date, investigations of Utah's oil-shale deposits have not been nearly as comprehensive as those of the Colorado deposits, and the deposits in Wyoming have been explored least of all. Estimates of oil in place in shales assaying 25 gallons per ton and at least 15 feet thick in Utah and Wyoming are 120 billion barrels and 43 billion barrels respectively. In the State of Utah oil shales which have an assay above 15 gallons per ton that are at least 15 feet thick are estimated to represent 320 billion barrels of oil in place. In Wyoming, oil shales in minable beds richer than 10 gallons per ton are currently estimated at 370 billion barrels. The shale oil in place in the combined high and low grade oil shales in the three States comes to the previously stated total of about two trillion barrels.

In Colorado, the principal oil-shale measures occur within a 1,350 square mile area of the Piceance Creek Basin (Figure 5). The areas facing the Colorado River and its tributaries, and to a lesser extent Piceance Creek and other stream beds where the shale outcrops, are privately-owned. However, virtually all of the central portion of the Basin is federally-owned. Although the oil shales in the center of the basin are buried under hundreds of feet of overburden, nearly 2,000 feet of these beds average 25 gallons per ton. Oil-shale measures of [7516] this richness become progressively thinner toward the Basin margin. Near the outcrop facing the Colorado River, the beds averaging 25 gallons per ton are less than 100 feet thick.

Of the entire 1,300,000 acres of land in the oil-shale area in Colorado, 582,000 acres (including Naval Reserves) are federally-owned, 380,000 are privately-owned, and 338,000 are lands in unpatented mining claims. Approximately 1,000,000 acres are underlain by oil-shale deposits and the remainder is contiguous non-shale bearing land, principally the areas of stream valleys between oil-shale outcrops. Virtually all of the central portion of the Piceance Creek Basin is federally-owned land. Federal

oil shale averaging at least 25 gallons per ton and 15 feet or more thick probably average about 1,000 feet in thickness, where the shale of this grade on privately-owned land probably averages a little over 100 feet.

Of this previously mentioned 1.3 trillion barrels of oil in deposits containing 10 gallons or more of oil in the Piceance Creek Basin the privately-owned oil shale represents about 100 billion barrels of shale oil and the unpatented mining claims about 100 billion barrels. The remaining lands are federally-owned and contain deposits of about 1.1 trillion barrels in place. Based upon a shale grade of 25 gallons per ton the oil potential would be half of these quantities.

* * * *

[7794]

DEFENDANT'S EXHIBIT S

The Triumph Nos. 22 and 23, the F.D. No. 7, the J.D. Nos. 1, 2, 3 and 5 oil shale placer mining claims were located in April of 1918.

In May of 1920 Summers made application for an enlargment homestead entry and for an additional stock raising homestead entry. The entries were allowed with mineral reservations. Combined final proof was submitted in 1923.

The holders of the above mining claims protested the granting of patents on the entries to Summers on the ground that the entries were made on lands covered by prior valid mineral locations.

After extensive proceedings within the Interior Department a decision was issued on September 30, 1927. The decision found that the mining claims were supported by a valid discovery and held the homestead entries for cancellation because made upon lands covered by prior valid mineral locations.

By a decision dated July 1, 1931, the oil shale placer mining claims were declared null and void on an assessment work charge.

By a decision dated October 14, 1931, Summers was permitted to file an application for the reinstatement of his cancelled homestead entires, and by a decision of November 20, 1931, the homestead entries were reinstated inasmuch as the conflicting mining claims had been declared null and void for failure to perform assessment work.

The homestead entries were patented with a reservation of minerals in 1932.

The following material is attached:

* * * *

4. The decision of November 20, 1931, reinstating the homestead entires.

* * * *

[7814]

United States Department of the Interior General Land Office Washington Nov 20 1931 Jones Goerner McGee Altizer (illegible) Obenchain

In reply please refer to Denver 032575-6"N"AKJ

George L. Summers. (Oil shale.) Promulgating departmental decision dated October 14, 1931; cancelled homestead entries involved,reinstated with reservation of minerals.

Register, Denver, Colorado.

Sir: Under date of June 3, 1931, George L. Summers filed application for reinstatement of his former homestead entries Denver 032576, embracing the S½ NW¼, N½ SW¼ Sec. 1, S½ NE¼, N½ SE¼ Sec. 2, and Denver 032575, embracing lots 3, 4, S½ NW¼ Sec. 2, lots 1, 2, 3, SE¼ NE¼ Sec. 3, all in T. 5 S., R. 97 W., 6th P. M.

These entries were allowed May 17, 1920, and January 28, 1921, respectively, with mineral reservation under the act of July 17, 1914 (38 Stat. 509), as to the first entry, and under the act of December 29, 1916 (39 Stat. 862) as to the second entry. Final proof in support of the entries was submitted May 22, 1923. [stamp] Return this copy to G. L. O. when original signed.

[7815] The entries, after extended hearings upon protests filed by J. D. Freeman and the Standard Shales Products Company, United States intervenor, were cancelled by letter "N" of October 14, 1927. This action was taken in pursuance of departmental decision dated September 30, 1927, which found and held the entries to be in conflict with certain prior valid and subsisting oil shale placer claims of the aforesaid protestants, known as J. D. Nos. 1, 2, 3, 5, F. D. No. 7, and Triumph Nos. 22 and 23.

Adverse proceedings against these claims, among others, have since been directed by this office, on the ground that assessment work for the year ending July 1,1929, had not been performed on or for the benefit of the claims.

The applicant, Summers, in view of this action, and on the assumption that the said claims would shortly be cancelled, asked that his application for reinstatement be accepted and noted on the records of both your office and this office, and that when the claims should be finally cancelled the said cancelled homestead entries be reinstated and the final proof accepted.

[7816] The application was, by letter "N" of June 18, 1931, rejected. This action, on appeal, was modified by the Department by decision dated October 14, 1931,copies inclosed, which concluded as follows:

"The register of the local office should therefore be instructed to permit the filing of the application for reinstatement to await the outcome of the proceedings against the mining locations. Should the charge as to any or all of the above named locations be finally sustained, the application will be considered as initiated as of the date of the notation thereof on the local records, and subject to applicable rules governing reinstatement of entries,reinstatement of the entry or entries of Summers may be allowed for the land embraced in any of the above named locations that are adjudged to have lapsed by failure to resume assessment work thereon or for their benefit prior to the service of notice of the proceedings pending against them. The application should, of course, be rejected as to all tracts covered by claims where delinquency is not established.

"The Commissioner's decision is therefore modified to conform to these views and the case is remanded for action accordingly."

As you have already been advised, all of the said mining locations were finally declared null and void by letters "N" of June 4, 1930, and July 1, 1931. The lands, however, had in the meantime been withdrawn from lease or other disposal by Executive Order of [7817] April 15, 1930, subject to valid existing rights.

The records show that Summers filed satisfactory final proof on the entries showing full compliance with the homestead laws. His claims were initiated in apparent good faith long prior to the withdrawal, and he had earned patent under both entries and would have received patents therefor but for the prior placer mining locations, which are now out of the way. Therefore, he had prior to the withdrawal acquired equitable claim to the land which may be considered as a valid existing right within the saving clause of the withdrawal order. Homestead entries 032575 and 032576 are therefore hereby reinstated.

So note your records and advise Summers, transmitting to him a copy of said decision.

Very respectfully,

Thos. C. S. Farrell
Acting Commissioner.

Approved: Nov 20 1931
Sgd. Ray Lyman Wilbur
Secretary.

mc

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[7833]

DEFENDANT'S EXHIBIT U

On July 19, 1927, an application was filed for an oil and gas prospecting permit covering, among other lands, the S½NW¼ and S½NE¼ of Section 4, Township 5 South, Range 95 west. An oil and gas prospecting permit covering the above lands and others was issued on December 8, 1927.

The Lucy Agnes No. 2 oil shale placer mining claim covering the S½N½ of Section 4, Township 5 South, Range 95 West, was declared null and void on an assessment work charge by a decision dated August 18, 1930.

The oil and gas prospecting permit continued in existence and was exchanged for an oil and gas lease covering, among other lands, the S½NW¼ and the S½NE¼ of Section 4, Township 5 South, Range 95 West. The oil and gas lease was issued December 31, 1938.

The following material is attached:

1. The decision of August 18, 1930, declaring the Lucy Agnes No. 1 and No. 2 oil shale placer mining claims null and void.

* * * *

[7834] 4x 1x C.F.D. United States Department of the Interior General Land Office Washington Aug 18 1930

In Reply Please Refer To 1282120 "N" UEC.

United States vs. Universal Shale Oil Company

Oil shale. R. Contest 12372. Locations null and void. Case closed.

Register, Denver, Colorado.

Sir: By office letter "N" of May 1, 1930, adverse proceedings were directed against the Lucy Agnes No. 1, N½ N½ and Lucy Agnes No. 2 S½ N½ Sec. 4, T. 5 S., R. 95 W., 6th P. M., oil shale placers upon the charge:

"That annual assessment work to the value of $100.00 was not performed upon each or or any one of the Lucy Agnes Nos. 1 and 2 oil shale placers for the year ending July 1, 1929, and that work has not been since resumed."

Notices of the charge issued by you and were served on four of the trustees of the company May 9, 1930. In your letter of July 1, 1930, you state that no answers were filed within the time allowed.

The failure of the contestee to file answer denying the charge is taken as an admission by it of the truth thereof, in view of which the Lucy Agnes Nos. 1 and 2 oil [7835] shale placers are declared null and void and the United States has taken possession of the lands within the claims for its own uses and purposes. The case is closed.

Advise the contestee by ordinary mail.

Very respectfully,

(Sgd) C. C. Moore
Commissioner.

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* * * *

Clerk's Note: Defendant's Exhibits W, X and Y are in a separate Exhibit Book.

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* * * *

[8226]

DEFENDANT'S EXHIBIT KK-

Term Rental Permits and Billings for Grazing Privileges and Licenses for Grazing Privileges

* * * *

[8480]

DEFENDANT'S EXHIBIT E

Colorado State Office 339 New Custom House P. O. Box 1018 Denver 1, Colorado

Dr. Tell Ertl Grand Valley, Colorado Dec 16 1960

Dear Mr. Ertl: This acknowledges receipt of your letter of December 12, 1960.

We have no jurisdiction over an individual's decision to submit, or not to submit, a mineral patent application. This is the prerogative of the individual concerned.

* * * *

(4) In your reference to "Assessment Work," you apparently mean the $500.00 statutory improvement requirement of the mining law since assessment work to hold the claims is no longer necessary under the "Krushnic Decision," which no doubt is familiar to you.
[8481] However, the question of whether a patent application is submitted is a decision that must be made by the individual concerned.

Sincerely yours,

Lowell M. Puckett
State Eupervisor

(Signed) J. Elliott Hall
Acting State Supervisor

Director (2)

cc: L&M case files
L&M reading
SO reading
Kuehnel/mb

CASE NO. 9582

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Pleas and proceedings before the Honorable William E. Doyle, Judge of the United States District Court for the District of Colorado, presiding in the following entitled cause:

JOSEPH B. UMPLEBY, and WASATCH DEVELOPMENT CO., PLAINTIFFS

vs.

STEWARD L. UDALL, Secretary of the Interior, DEFENDANT

No. 8685, Civil

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[1]

COMPLAINT

Complaint for Declaratory Judgment and Relief in the Nature of Mandamus

Plaintiffs, Joseph B. Umpleby and Wasatch Development Co. for cause of action herein, complain of the defendant and allege:

1. Plaintiff Joseph B. Umpleby is a citizen of the State of Texas. Plaintiff Wasatch Development Co. is a corporation incorporated under the laws of the State of Colorado.

2. The defendant, Stewart L. Udall, here sued in his official capacity, is the duly qualified and acting Secretary of the interior of the United States, having his official place of business at the seat of government in Washington, D. C., and as Secretary is charged with the administration of the laws of the United States relating to the public lands.

3. The matter in controversy, exclusive of interest and costs, exceeds in value the sum of $10,000; involves the

construction of certain laws of the United States under which the plaintiffs claim vested rights in and to certain oil shale mining claims located in Garfield County, Colorado; and further involves [2] the duty of the defendant to faithfully observe the pertinent acts of Congress pertaining to the mining laws, and more particularly to require defendant to issue land patents to plaintiffs to the mining claims involved in this action.

4. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § § 1361, 1391 (Action to compel an officer of the United States to perform his duty), 28 U.S.C. § § 2201, 2202 (Declaratory Judgments).

First Claim for Relief

1. That on September 8, 1959, Joseph B. Umpleby and Wasatch Development Co. filed application for mineral patent (Colo. 030979) on Carbon Nos. 1 to 5 oil shale placer mining claims, being the S½S½ of Sec. 33; N½ S½ of Sec. 33; S½N½ of Sec. 33, N½N½ of Sec. 33; and the N½N½ of Sec. 32; and the Elizabeth Nos. 1, 2, 4 to 12 oil shale placer mining claims, being the S½S½ of Sec. 36; N½S½ of Sec. 36; N½N½ of Sec. 36; N½ N½ of Sec. 35; S½N½ of Sec. 35; N½S½ of Sec. 35; S½S½ of Sec. 35; S½S½ of Sec. 34; N½S½ of Sec. 34; S½N½ of Sec. 34; N½N½ of Sec. 34; all in Township 4 South, Range 97 West of the Sixth P.M., Garfield County, Colorado.

2. That on June 26, 1929, adverse proceedings were initiated against Joseph B. Umpleby, et al. on the above claims (Contest No. 12029), alleging that the assessment work was not performed on or for the benefit of the claims for the years ending July 1, 1927 and July 1, 1928.

3. That on or about July 23, 1929, an answer was filed by Joseph B. Umpleby, et al. to the charges made in the contest, [3] alleging that under the decisions of the courts and the Department of the Interior, the performance of assessment work was unnecessary so far as the United States is concerned, and that the defaults mentioned were not available to the United States.

4. That on June 9, 1930, the contest proceedings were amended charging that the annual assessment work to the

value of $100 was not performed upon the claims for the year ending July 1, 1929.

5. That on or about July 1, 1930, an answer was filed by Joseph B. Umpleby, et al. to the amended charges alleging that under the decisions of the courts and the Department of the Interior, the performance of assessment work was unnecessary so far as the United States is concerned, and that the defaults above-mentioned are not available to the United States. The contestees further alleged that no third person, by applying for a lease or otherwise, has, at any time, secured or attempted to secure any right to the lands covered by the said oil shale claims, during the said period of default in assessment work.

6. That on July 23, 1930, a decision was rendered against Joseph B. Umpleby, et al. by C. C. Moore, Commissioner, citing the Krushnic Case (280 U.S. 306) as legal authority for the Department to contest the claims for failure to do assessment work as alleged in the contest.

7. That on August 28, 1930, Joseph B. Umpleby, et al. appealed the decision to the Secretary of Interior and filed their reasons and brief in support thereof stating among other things that the Commissioner erred in holding that the Supreme [4] Court of the United States, in the case of Krushnic v. Wilbur, 280 U.S. 306, had held that the United States is concerned with the doing of assessment work on an oil shale placer claim validly existing on February 25, 1920, and that the Commissioner erred in failing to give the appellants a hearing as requested by them and a chance to prove the truth of the matters set out in the answer.

8. That on September 18, 1930, Joseph B. Umpleby, et al., by their attorneys, wrote the Secretary of the Interior as follows: "One of the questions involved in the contest is the right of the United States to contest for alleged default in assessment work. This same question has been raised in Denver Land Office contest No. 12264, United States v. Federal Shale Oil Company, involving Buck Canyon No. 1 oil shale placer. Since the Federal Shale Case is being very fully briefed and will probably

be argued orally, we suggest that the decision in the case of U. S. v. L. Z. Harrison, Joseph B. Umpleby, et al. be deferred until after the Federal Shale Case has been decided."

9. That on November 29, 1930, a written decision was rendered by Assistant Secretary, John H. Edwards, designated (A. 15072), L. Z. Harrison, Joseph B. Umpleby, et al. A copy of the decision is marked as Exhibit A-1 and is attached hereto, incorporated herein by reference and made a part hereof.

10. That in written decision (A. 15072) John H. Edwards, Assistant Secretary, stated: "An appeal to the Department was taken and following the same, the attorneys for the claimant [5] requested that decision herein be deferred to await decision in the case of the Federal Shale Oil Company, which was being very fully briefed and would probably be argued orally. Decision in the cited case was rendered November 11, 1930 (A-15048, 53 L. D. -), and the conclusions therein reached are applicable and govern herein. For the reasons stated in said decision of November 11, 1930, the decision appealed from is affirmed."

11. That on June 3, 1935, the Supreme Court of the United States in Ickes v. Virginia-Colorado Development Corp. (295 U.S. 639), held against the Department of Interior on their interpretation of Wilbur v. Krushnic (280 U.S. 306) and said: "So far as the government was concerned, failure to do assessment work for any years was without effect. Whenever $500 worth of labor in the aggregate had been performed, other requirements aside, the owner became entitled to a patent, even though in some years annual assessment labor had been omitted.

12. That on June 24, 1935, a written decision, The Shale Oil Company, (55 I.D. 287) was rendered by Assistant Secretary Walters. A copy of the decision is marked as Exhibit A-2 and attached hereto, incorporated herein by reference, and made a part hereof.

13. That on page 290 of The Shale Oil Company Case, it is stated, "The Supreme Court, adverting to the fact that the validity of the locations there involved was not questioned, except as to failure to perform assessment

work, held that plaintiff (The Virginia-Colorado Development Corporation) lost no rights by failure to do the assessment work; that failure gave [6] the Government no right of forfeiture; that the plaintiff came directly within the exception contained in Section 37 of the Leasing Act saving existing valid claims 'thereafter maintained in compliance with the laws under which initiated, which claims may be perfected under such laws'; that the challenge to the valid existence of the claims had no proper basis; and that the Department's challenge, its adverse proceedings, and the decision set forth in the bill, went beyond the authority conferred by law."

"In view of this opinion of the court, the adverse proceedings and decision of the Commissioner therein in the instant case must be held as without authority of law and void. The above-mentioned decision of the Department in the Virginia-Colorado Development Corporation case and the instructions of June 17, 1930, are hereby recalled and vacated. The above-mentioned decisions in the cases of Francis D. Weaver and Federal Oil Shale Company and other Departmental decisions in conflict with this decision are hereby overruled."

14. That by virtue of The Shale Oil Company decision, the Francis D. Weaver and Federal Oil Shale Company cases and other departmental decisions in conflict with The Shale Oil Company case, including (A. 15072) L. Z. Harrison, Joseph B. Umpleby, et al. were expressly overruled.

15. That on April 17, 1964, a written decision, Union Oil Company of California, et al. A-29560, was rendered by the Solicitor of the Department of Interior. A copy of the decision is marked as Exhibit A-3 and attached hereto, incorporated herein by reference, and made a part hereof.

[7] 16. That the Solicitor made a gross mistake of fact on Page Six (6) of the opinion (Exhibit A-3) when he found that Umpleby, et al. had not appealed the decision of the Land Commissioner to the Secretary, when in fact an appeal was made as shown in Exhibit A-1 attached to this complaint.

17. That the Solicitor was wrong as a matter of law when he concluded that the decision of The Shale Oil Company case overruling the Francis D. Weaver and Federal Oil Shale Company cases and other Departmental decisions in conflict with this decision was a legal void.

18. That the Solicitor was wrong as a matter of law when he concluded that the action taken by the Department of Interior that was declared beyond its authority in the Ickes v. Virginia-Colorado Development Corp. case, 295 U.S. 639, now acquires validity by the doctrine of finality of administrative action.

19. That the Solicitor was wrong as a matter of law on all other legal conclusions reached in his decision of April 17, 1964. (Exhibit A-3)

20. That the Solicitor was wrong as a matter of law in rejecting Patent Application (Colo. No. 030979).

21. That plaintiffs have exhausted all of their administrative remedies within the Department of Interior in respect of the matters set forth in this Complaint.

Second Claim for Relief

1. The allegations of Paragraphs One through Fifteen of the First Claim for Relief are incorporated herein by reference.

[8] 2. That after Wilbur v. Krushnic, supra, in 1930, and again after the 1935 decision in Ickes v. Virginia-Colorado Development Corp., supra, the defendant's predecessors in office decided that all prior decisions invalidating oil shale claims for failure to perform assessment work, including the decision by the Secretary in Contest No. 12029, were null and void and had no effect on such claims.

3. That during the period 1935 through 1962, the defendant, his predecessors in office and officials and employees of the Department of the Interior repeatedly and publicly affirmed that the decisions in the assessment work contest proceedings, including Contest No. 12029, were void and of no effect and did not operate to invalidate or otherwise adversely affect the interests of the plaintiffs, their predecessors in interest and others similarly situated.

4. That during the period 1935-1962, the defendant and his predecessors in office issued land patents covering at least 74,000 acres of oil shale claims which had been declared null and void in assessment work proceedings such as those here involved and which were in all respects of fact and law the same as the mining claims referred to in Paragraph No. 1 of the First Claim for Relief above, with full knowledge that such contest proceedings had resulted in decisions adverse to the claims. The Department's consistent practice of issuing patents for oil shale claims which had purportedly been invalidated by assessment work proceedings was widely known throughout the area in which the claims were located, and were known both to the plaintiffs and to their predecessors in interest.

[9] 5. That by reason of the facts set forth in Paragraphs 2, 3 and 4 above, the Department has duly adopted a rule of law, which cannot be retroactively altered, that the assessment work contest, including Contest No. 12029, had no effect on the validity of mining claims.

6. That from 1935 until 1962, the plaintiffs or their predecessors in interest both knew of and relied upon the consistent policy of the defendant and his predecessors in office of treating the decisions in the original and the renewed assessment work contests, including the decision in Contest No. 12029, as nullities with no force and effect. During that period the defendant and his predecessors, through their authorized subordinates, made repeated representations to the plaintiffs, their predecessors in interests, their representatives, advisers, and neighbors, that the assessment work contests had no effect on the validity of mining claims, and the plaintiffs have justifiably relied upon such representations in the expenditure of time and money in acquiring, improving, and perfecting their rights to the mining claims set out in Paragraph 1 of the First Claim for Relief above.

7. That the decision of the Solicitor of the Department of Interior, dated April 17, 1964, rejecting Patent Application (Colo. 030979) is arbitrary, capricious, and violates the Constitutional guaranties of the Fifth Amendment of the Constitution of the United States.

Third Claim for Relief

1. The allegations of Paragraphs One through Fifteen of the First Claim for Relief are incorporated herein by [10] reference and the allegations of Paragraphs Two through Six of the Second Claim for Relief are incorporated herein by reference.

2. That the granting of patents to other oil shale placer mining claims that were contested for the same reasons and had the same status as the claims in this action (Colo. 030979) and the rejection of these claims by the Solicitor of the Department of Interior in the decision of April 17, 1964, denied to the plaintiffs equal protection of the law; contrary to the Fifth Amendment of the Constitution of the United States.

Fourth Claim for Relief

1. That the allegations of Paragraphs One through Fifteen of the First Claim for Relief are incorporated herein by reference, and the allegations of Paragraphs Two through Six of the Second Claim for Relief are incorporated herein by reference.

2. That in 1952 the Bureau of Land Management, Region IV, of the Department of Interior recognized the validity of oil shale placer mining claims that had been contested for failure to do assessment work and proposed a program to accelerate processing of claims to patent.

3. That in 1954 the U. S. Department of the Interior, Bureau of Mines, met with the owners of unpatented oil shale placer mining claims and encouraged them to core drill their shale claims in order to supply the Bureau of Mines more core hole assay information.

[11] 4. That in 1957, the U. S. Department of Interior, Geological Survey, was contacted by the plaintiffs and advised that plaintiffs had valid oil shale placer claims and that core holes would be drilled by plaintiffs on the placer claims involved in this action, and the core hole assay information was supplied to the Department of the Interior.

5. That in 1959 Mineral Patent Application Colo. 030979 was made on the claims involved in this action.

6. That in 1959 the U. S. Department of the Interior, Geological Survey, was notified by plaintiffs that they had valid oil shale placer mining claims and protested the formation of a Federal Oil and Gas Unit embracing portions of their claims.

7. That in 1960 the Honorable Fred H. Seaton, Secretary of the Interior, was personally notified by plaintiffs as to the existence of the valid oil shale placer mining claims involved in this action.

8. That in 1960 the Department of Interior, Bureau of Mines, used the core hole assay information supplied to them by plaintiffs from the claims involved in this action in a published U. S. Bureau of Mines, Report of Investigations, 5614.

9. That the first time that plaintiffs were notified of the Department of Interior's new policy was on February 16, 1962, when the Manager of the Colorado Land Office of the Bureau of Land Management rejected plaintiffs' application for patent (Colo. No. 030979).

10. That the decision of the Solicitor of the Department of Interior, dated April 17, 1964, rejecting Patent [12] Application (Colo. 030979) destroys a vested property right in a possessory mining claim and violates the Due Process Clause of the Fifth Amendment of the Constitution of the United States.

Fifth Claim for Relief

1. That the allegations of Paragraphs One through Fifteen of the First Claim for Relief are incorporated herein by reference; the allegations of Paragraphs Two through Six of the Second Claim for relief are incorporated herein by reference and the allegations of Paragraphs Two through Nine of the Fourth Claim for Relief are incorporated herein by reference.

2. That because of the allegations set forth hereinabove, the Solicitor of the Department of Interior in his decision dated April 17, 1964, rejecting Patent Application Colo. No. 030979, made a mistake of law resulting in constructive fraud.

3. That plaintiffs have exhausted all of their administrative remedies with the Department of Interior in respect to the matters set forth in this Complaint.

Wherefore, plaintiffs pray that the Court adjudge, decree and declare:

(a) That the decision of the Solicitor of the Department of the Interior dated April 17, 1964, rejecting Patent Application Colorado No. 030979 is null and void.

(b) That the defendant take such action as is [13] necessary to issue patents to the plaintiffs to the Elizabeths Nos. 1, 2, 4 to 12 oil shale placer mining claims and the Carbon Nos. 1 through 5 oil shale placer mining claims.

(c) For such other, different and further relief as may to the Court seem just and proper.

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Denver 15, Colorado

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Address of Plaintiffs:
7675 W. 14th Avenue
Denver 15, Colorado

Filed July 13, 1964

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* * * *

[23]

EXHIBIT A-3

United States Department of the Interior Office of the Solicitor Washington 25, D.C. Apr 17 1964 In reply refer to:

A-29560 Union Oil Company of California, et al.

BLM 07667, et al. Mineral patent applications rejected Affirmed in part; held in abeyance in part, pending further findings of fact.

Appeal From Land Office Decisions

The Union Oil Company of California and others[1] have each appealed to the Director of the Bureau of Land Management from decisions of the Manager of the Colorado Land Office issued on February 16 and 23, 1962. These decisions rejected mineral patent applications for oil shale placer mining claims on lands in Garfield and Rio Blanco counties, Colorado. The Secretary assumed supervisory jurisdiction because of the importance of the issues involved and assigned the case to the Solicitor for final decision.[2] Since the facts out of which these appeals arise are identical or similar and, since all of the claims involve identical issues and common questions of law, the appeals will be considered together.

[24] The Manager rejected each of the patent applications under consideration on the ground that appellant's mining claims had been declared null and void in adverse proceedings brought by the Government between 1930 and 1933 on the charge of failure to perform annual assessment work. In 1935, in a case not involved in this appeal, the Supreme Court held that failure to perform annual assessment work was not a ground for cancellation of oil shale placer claims by the Government. Ickes v. Virginia-Colorado Development Corporation, 295 U.S. 639 (1935). The basis of the Manager's decisions in the

[1] The appeal numbers, the names of the appellants, the serial numbers of their patent applications, and the dates of the decisions appealed from are set forth in appendix A.

[2] Memorandum of the Secretary, May 8, 1962.

present cases was not that the original cancellations were correct as a matter of law at the time they were made, but rather, that "under . . . principles of finality of administrative action, estoppel by adjudication, and res judicata . . .", they cannot now be challenged.

As a preliminary matter, the appellants have joined in a motion to vacate the Colorado Land Office Manager's decisions or, in the alternative, to remand these cases for full hearing, after notice, of matters of fact and law relied upon by the Manager in rendering his decisions. The motion is based on assertions which, for the most part, raise the same issues involved in the appeal. The issues raised in the motion will, therefore, be disposed of in this opinion together with the issues raised by the appellants on the appeal.

The decisions of the Land Office Manager are first attacked on the ground that the Department was required by law and regulation to provide a hearing on the questions of fact and law decided by the Manager. It is further asserted that the Manager exceeded his authority [25] in that the decisions rendered by him were tantamount to an adjudication of the validity of the appellant's mining claims, no hearing having been held. This, appellants contend, operates to deprive them of due process of law.

The assertion is then made that the cancellations upon which the Manager based his decisions were of no effect since the Department never obtained personal jurisdiction over the contestees in the original proceedings and, in fact, never actually canceled some of the claims upon which the present appellants base their applications.

Assuming, arguendo, that the Land Office Manager had the authority to decide these cases without providing a de novo hearing in each case, the appellants assert that the principles upon which the Manager based his decision are not controlling here. They contend that, so long as he retains jurisdiction over the lands in question, the Secretary may, in the exercise of his supervisory authority, vacate any decision subsequently found to be in error even though the time within which an appeal could be prosecuted has expired. This, the appellants contend, is what occurred when the Secretary decided The Shale

Oil Company, 55 I.D. 287 (1935), which "overruled" prior Departmental decisions canceling oil shale placer claims for failure to perform annual assessment work.

Next, the appellants contend that the doctrine of res judicata is not applicable to administrative decisions. [26] The appellants further assert that the principles of finality of administrative action, estoppel by adjudication and res judicata are inapplicable in the present case since the Supreme Court, in Ickes v. Virginia-Colorado Development Corporation, 295 U.S. 639 (1935), held that the cancellation of a mining claim upon the ground of failure to perform annual assessment work was beyond the jurisdiction and power conferred by law upon the Secretary and that such cancellation is now subject to collateral attack.

Finally, the appellants contend that since Ickes v. Virginia-Colorado Development Corporation, suprs, and The Shale Oil Company, supra, the Department has consistently treated the early decisions of the Land Commissioner as being void and of no legal effect and has at all times prior to Febuary, 1962, recognized the validity of the appellants' claims.

Early Departmental Decisions and Policy

Before considering the appellants' contentions, the early decisions and departmental policy regarding oil shale placer claims will be examined briefly.

Prior to 1920, the Department of the Interior held that failure to perform annual assessment work on mining claims [3] rendered the [27] land subject to relocation by others but did not constitute grounds for the Government to cancel such claims. P. Wolenberg, 29 L. D. 302 (1899). Thereafter, all oil shale lands were withdrawn from location by the Mineral Leasing Act of February 25, 1920 (41 Stat. 451, 30 U.S.C., sec. 193), subject to the rights of owners of valid mining claims "thereafter maintained in compliance with the laws under which initiated."

In Emil Krushnic, 52 I.D. 282 (1927), the Department held that failure to perform annual assessment

[3] As required by the Mining Law of May 10, 1872 (Rev. Stat., secs. 2324, 2325, 30 U.S.C., secs. 28, 29).

work was a failure to maintain a claim under the law and automatically subjected the claim to cancellation by the Government. The Supreme Court rejected this theory in Wilbur v. Krushnic, 280 U.S. 306 (1930), and held that a failure to do assessment work could not be challenged by the Government following the resumption of work on the claim.

Following Wilbur v. Krushnic, supra, the Department took the position that the United States could make a lawful challenge to the validity of an oil shale claim for failure to perform annual assessment labor if such challenge was made before assessment work was resumed on the claim.[4] Accordingly, the Land Commissioner ordered that new [28] adverse proceedings be commenced on each claim on which there was an actual default and no resumption of the annual labor required by the statute.

However, in Ickes v. Virginia-Colorado Development Corporation, 295 U. S. 639 (1935), the Supreme Court declined to accept the Department's theory that oil shale claims could be canceled where assessment work was delinquent and had not been resumed. The Court said that the decision of the Department in canceling these claims "... went beyond the authority conferred by law." 295 U. S. at 647.

Shortly thereafter, the Department issued its decision in The Shale Oil Company, 55 I. D. 287 (1935), which recalled and vacated the departmental decision in Virginia-Colorado Development Corporation, 53 I. D. 666 (1932), and held that all other departmental decisions and instructions which were inconsistent with the decision of the Supreme Court were "overruled". The early decisions canceling the claims now being considered were never reopened, recalled or vacated in proceedings following The Shale Oil Company, supra.[5]

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[4] Instructions, 53 I.D. 131 (1930).

[5] With one exception, no appeals were taken from the decisions of the Land Commissioner which canceled the claims in issue here. In one case, the cancellation of the Oyler Nos. 1-4 oil shale placer claims was appealed to the Secretary of the Interior. The cancellation was upheld by the Secretary (The Index Shale Oil Company, A-16465 (March 10, 1932)), and the final Departmental decision

[29] Procedural Requirements of Departmental Regulations, the Administrative Procedure Act, and the Fifth Amendment

As stated above, the appellants have joined in a motion to vacate the Land Manager's decisions and/or to remand the case for full hearing on issues of fact and law. The motion is based, in part, on the assertion that the Manager was required to refer the matter to a hearing examiner for a full hearing and that his failure to do so is tantamount to an attempt to invalidate the claims without a hearing of any kind. However, hearings were in fact held in the contest proceedings involving many of the claims included in this appeal[6] [30] and the then-owners of those claims participated in the hearings and preserved their right of appeal.[7] The reapplication for a patent by a claimant after his claim has been contested successfully or after his patent application has been denied does not require the Department to grant a new hearing. (Gabbs Exploration Co., 67 I.D. 160 (1960). The assertion that a de novo hearing is

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was not challenged by subsequent court action. The Oyler Nos. 1-4 claims form the basis for an application filed by Pacific Oil Company which was rejected by the Manager in February, 1962, and which is included among the rejections on appeal herein.

[6] The following claims were canceled in contest proceedings in which the owners of the claims participated:

Carbon Nos. 1-4 (Colo. No. 030979), canceled in Contest No. 12029
Elizabeth Nos. 1,2 and 4-12 (Colo. No. 030979), canceled in Contest No. 12029
Southeast (Colo. No. 028751), canceled in Contest No. 12972
Northeast " " " " " " " "
Northwest " " " " " " " "
Oyler 1-4 (Colo. No. 12327), canceled in Contest No. 12039
Jack Pot Nos. 4-11 (Colo. No. 045092), canceled in Contest No. 13038

[7] The applicable Rules of Practice provided as follows: No person who has failed to answer the contest affidavit, or having answered, has failed to appeal at the hearing, shall be allowed to appeal from the final action or decision of the Manager . . . 43 C.F.R., sec. 221. 49,. 19 F.R. 9056 (1954).

now required is without merit where such cancellations were made in default proceedings in the manner prescribed by applicable departmental regulations,[8] the owners having been properly served with notice of contest and provided an opportunity to challenge the cancellation of the claim. This same contention was raised and rejected by the Department in Gabbs Exploration Co., supra. The latter case was upheld on review by the United States District Court for the District of Columbia and affirmed on appeal to the United States Court of Appeals for the District of Columbia Circuit.[9] The opinion [31] by the court contains the following pertinent discussion concerning the adequacy of notice:

> The owners of the . . . claims were not denied due process in the original contests, for it is clear that they had adequate notice of the contest against them, they were offered a hearing, and they were informed of the cancellation of their claims. In view of what we have previously stated, there was no jurisdictional defect in the 1929 contests. . . . . 315 F. 2d at 39-40.

As recognized in the Gabbs Exploration Co. decision, supra, the essential elements of due process are notice and an opportunity to defend against the charges asserted. (Simon v. Craft, 182 U.S. 427 (1901), Cameron v. United States, 252 U.S. 450 (1920)). The failure of the owners of these claims to participate in the contest proceedings of which they had adequate notice and in which they had an opportunity to defend the validity of the claims at a hearing does not entitle such owners or their successors in interest to another opportunity for a hearing on the same question. The fact that an opportunity for a hearing was forfeited by the default of the owners of these claims does not furnish the basis for a claim that due process of law has been denied. (See

[8] Circular No. 460, entitled "Manner of Proceeding in Contests Initiated Upon a Report by a Representative of the General Land Office," is reproduced in full and attached hereto as Appendix B. Sections 4, 5 and 6 thereof set forth the form and manner of issuing the notice of contest to the claimant in this class of cases. This Circular was effective at all times relevant here.

[9] Gabbs Exploration Co. v. Udall, 315 F. 2d 37 (1963).

American Surety Co. v. Baldwin, 287 U.S. 156, 169 (1932); Opp Cotton Mills Inc. v. Administrator of the Wage and Hour Division of the Department of Labor, 312 U.S. 126, 152 (1941)).

Appellants' assertion that failure to order a new hearing deprived them of due process is, therefore, rejected insofar as notice of contest is found to have been adequate in the original contest proceedings.

[32] In those cases in which the requirements of notice were definitely met prior to the cancellation of the claim, the then owners of the claim having participated in the contest proceedings, the order affirming the decision of the Land Manager will, for reasons set out herein, become effective immediately.

In the remaining cases, the appellants will be granted 60 days within which to submit materials relating solely to their contention that their claims were canceled without compliance with the requirements of notice. Thereupon, a determination regarding the sufficiency of notice will be made. If necessary, hearings will be ordered to resolve any factual questions which remain unresolved on the record. If no such materials are received from these appellants within the 60 day period, they will be considered to have conceded that the Departmental records accurately reflect the facts regarding the issuance of notice in the early contest proceedings and the determination will be made on the basis of the present record.

[33] Effect of the Shale Oil Company Case

Upon the authority of the decision of the Supreme Court in Ickes v. Virginia-Colorado Development Corporation, supra, the decision of the Commissioner declaring oil shale placer claims forfeited in The Shale Oil Company, supra, was reversed by the Department.[10] It was stated in the Department's decision that:

The above-mentioned decision of the Department in the Virginia-Colorado Development Corporation case and the

[10] The Shale Oil Company, 55 I.D. 287 (1935). The Shale Oil Company decision had been held up to await the Ickes v. Virginia-Colorado Development Corporation decision then pending in the Supreme Court.

instructions of June 17, 1930, are hereby recalled and vacated. The above-mentioned decisions in the cases of Francis D. Weaver and Federal Oil Shale Company and other Departmental decisions in conflict with this decision are hereby overruled. The Commissioner's decision is *reversed*, and the record in the case *remanded* with instructions to reinstate the application and entry *in toto* and dispose of the same unaffected by the default in the performance of assessment labor, and if all else is found regular, to clear list the application for patent. (Emphasis supplied.) 55 I.D. at 290.

The appellants contend that, by overruling all Departmental decisions in conflict with The Shale Oil Company, the Secretary exercised his supervisory authority to nullify [34] all conflicting decisions of the Land Commissioner including those involved in the present appeal. In other words, it is argued that while the earlier decisions purported to cancel appellants' claims, The Shale Oil Company, supra, reinstated or corrected them in accordance with the decision of the Supreme Court in Ickes v. Virginia-Colorado Development Corporation. We do not agree. This is not what the decision either said or accomplished.

The language in The Shale Oil Company case distinguishes those cases actually before the Secretary from those which were not. As to the former, the Commissioner's decisions canceling the claims were expressly recalled and vacated. The latter were merely "overruled." [11]

The Department of the Interior has often "overruled" former holdings without in any way nullifying the action taken thereunder.[12] [35] To nullify action previously

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[11] See e.g., Francis D. Weaver, 53 I.D. 175 (1930), and The Federal Shale Oil Company, 53 I.D. 213 (1930), both of which were cited in The Shale Oil Compnay and merely "overruled." They have been treated as simply "overruled" ever since. See the cumulative Table of Modified and Overruled Cases in the frontispiece of Interior Department Decisions.

[12] See Instructions, 35 L.D. 549 (1907). And see Franco Western Oil Company, 65 I.D. 427 (1958); Anna R. Paul, A-24350 (1947) (upheld by the District Court for the District of Columbia in Anna R. Paul v. Marion Clauson, Civil No. 3309-48 (unreported)); Solici-

taken by giving retroactive effect to a change in administrative practice or legal ruling does violence to the settled principle of finality of administrative action. In this regard, the following statement set forth in Franco Western Oil Company, 65 I.D. 427 (1958), adequately summarizes the Department's long-standing practice:

> . . . the rule applied by the Department on those occasions when it has specifically considered the question as to whether, because of a change in the interpretation of a statute, its holding should have retroactive effect, has been to deny such effect to its decisions. 65 I.D. at 429.

In Safarik v. Udall, 304 F. 2d 944 (D. C. Cir. 1962), the Court of Appeals for the District of Columbia Circuit upheld the long-standing practice of the Department of the Interior to give prospective application to its decisions. The Court therein stated:

> . . . the Secretary of the Interior . . . should have and does have authority, when he promulgates an interpretive regulation, *or hands down a decision placing a different construction on a statute or regulation, from that laid down in an earlier decision or regulation, to give prospective operation only to the later regulation or decision.* (Emphasis supplied.) 304 F. 2d at 950.

It is therefore concluded that the Departmental decision in The Shale Oil Company, supra, merely recalled and vacated the earlier decision in that particular case ". . . thereby depriving the earlier opinion of all authority as a precedent." [13] It is further concluded [36] that the decision in The Shale Oil Company, supra, had no effect on the cases presently before us in this appeal.

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tor's Op., 58 I.D. 319 (1943); Timothy Sullivan, Guardian of Juanita Elsenpeter, 46 L.D. 110 (1917), overruling Heirs of Susan A. Davis, 40 L.D. 573 (1912); Bertha M. Birkland, 45 L.D. 104 (1916); Lillie E. Sterling, 39 L.D. 346 (1910). The rule of prospective operation of administrative rulings has been followed by other Governmental agencies. See generally, Davis, Administrative Law Treatise, secs. 5.09 and 17.07.

[13] Black, Law Dictionary (4th ed. 1951).

Application of the Doctrine of Finality of Administrative Action

The contention made by appellants that the doctrine of res judicata has no application to decisions of administrative agencies is erroneous.[14] The contention that the doctrine of res judicata (or its administrative-law counterpart—the doctrine of finality of administrative action) has not been recognized and applied before the Department of the Interior is *similarly* unsupportable. Since 1883[15] the Department has consistently held that the doctrine of res judicata is applicable to departmental decisions.[16] In 1886, Secretary Lamar stated, in Rancho San Rafael De La Zanja, 4 L.D. 482, that:

[37] Unless the principle of res judicata is recognized administrative action may become involved in chaos; the labors of the Department would become too cumbrous to admit of their intelligent discharge; uncertainty would cloud every inchoate title and, in many instances, vested rights would be endangered. 4 L.D. at 482.

In addition to the numerous departmental decisions recognizing the doctrine of administrative action, it has been implemented in the rules of practice before the Department.[17]

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[14] See generally, 50 C.J.S., Judgments-Public Officers and Boards, sec. 606; 2 Davis, Administrative Law Treatise, sec. 18.10 and authority cited therein.

[15] See Meredith v. The Atlantic and Pacific Railroad Company, 2 L.D. 499 (1883).

[16] See, e.g., Edward Christman, 62 I.D. 127 (1955); H. W. Rowley, 58 I.D. 550 (1943); Henshaw v. Ellmaker, 56 I.D. 241 (1937); Charles Perkins, 50 L.D. 172 (1923); Lillie M. Kelly 49 L.D. 659 (1923); Fosdick v. Shackleford, 47 L.D. 558 (1920); Lacey v. Grondorf, 38 L.D. 553 (1910), Gammon v. Weaver, 26 L.D. 383 (1898); Mee v. Hughart, 23 L.D. 455 (1896); Mary C. Stephenson, 11 L.D. 232 (1890); A. T. Lamphere, 8 L.D. 134 (1889); Higgins v. Wells, 3 L.D. 21 (1884).

[17] Prior to revision in 1956, 43 C.F.R. sec. 221, provided as follows: No appeal shall be had from action of Director affirming the decision of the manager in any case where the party adversely

The doctrine of res judicata, as applied in administrative decisions by this Department, is designed to achieve orderliness in the administration of the public lands as well as finality of decisions which have been closed finally and have not been appealed or otherwise attacked. Every reason of policy which supports the doctrine in the courts is applicable here. There must be an end to administrative litigation also. Public rights as well as private cannot be indefinitely suspended because further litigation may someday be initiated.

In applying the doctrine here, we are aware of the principle, [38] urged so strongly by the appellants, that since the Secretary has a continuing jurisdiction with respect to public lands until a patent issues, he is not estopped by the principles of res judicata and finality of administrative action, from correcting or reversing an erroneous decision by his subordinates or his predecessor in office. However, where, as here, the claim has been declared null and void in regular proceedings and the mining claimant acquiesces in such decision for many years, the decision nullifying the claim will be treated as conclusive and will not be reopened in the absence of a legal or equitable basis warranting reconsideration. (Gabbs Exploration Co., 67 I.D. 160 (1960); Gabbs Exploration Co., A-28213 (May 24, 1960) and A-28213 (Supp.) (July 11, 1960); Garfield County Exploration Co., A-28351 (August 30, 1960); Langdon H. Larwill, A-28697 (May 16, 1963). Nor does the fact that the legal basis for the decision has later been held by the court of appeals or the Supreme Court to be erroneous require a reconsideration and reversal of cases finally decided before the change in the interpretation or application of the law. (See e.g., Edward Christman, 62 I.D. 127 (1955); Lillie M. Kelly, 49 L.D. 659 (1923); and Mee v. Hughart, 23 L.D. 455 (1896)).

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affected shall have failed to appeal from the decision of said manager. 43 C.F.R. sec. 221.74.

The pertinent portion of the revised regulations provides: Effect of Failure to Appeal. When any party fails to appeal from an adverse decision of the Directors that decision shall as to such party be final and will not be disturbed except for fraud or for gross irregularity. 43 C.F.R. sec. 221.10, as revised in Circular 1950, 21 F.R. 1860, March 27, 1956.

In Lillie M. Kelly, supra, the Department of the Interior had canceled homestead entries after the issuance of the receiver's receipt. Kelly did not appeal from the decision and acquiesced therein for five years or more. In similar proceedings in another case (Thomas J. [39] Stockley, 44 L.D. 178 (1915)), the decision of the Secretary was challenged in a suit in equity and appealed eventually to the Supreme Court. The Court, in Stockley v. United States, 260 U.S. 532 (1923), held that:

The action of the Commissioner of the General Land Office, therefore, in directing a contest against Stockley's entry three years after the issuance to him of the receiver's receipt, *was unauthorized and void.* (Emphasis supplied.) 260 U.S. at 544.

Following the Supreme Court's decision in the Stockley case, Mrs. Kelly applied for an unrestricted patent claiming the earlier contest against her entry was "unauthorized and void." The Department's decision contains the following pertinent statement:

The Department has held that a decision made in accordance with the practice prevailing at the time it was rendered, if accepted by the parties affected as final, will not be re-opened for the reason that the practice then prevailing *has subsequently been held erroneous by the Supreme Court.* (Emphasis supplied.) 49 L.D. at 662.

The principle upon which the Department relied in canceling numerous oil shale placer claims was declared by the Supreme Court to be erroneous and beyond the authority conferred by applicable statutes. Ickes v. Virginia-Colorado Development Corporation, supra. The early decisions in the cases presently before the Secretary were not appealed and the Department has not vacated them. They were acquiesced [40] in by those adversely affected for over 25 years. "The fact that . . ." the principle on which these earlier decisions are based is ". . . now held by the Supreme Court to be erroneous is not deemed a sufficient reason for reversing and annulling decisions which have become final." Mee v. Hughart, supra.

Jurisdiction of the Land Commissioner and Effect of Ickes v. Virginia-Colorado Development Corporation

The appellants contend that the Supreme Court, in Ickes v. Virginia-Colorado Development Corporation, supra, held that the Department of the Interior was without jurisdiction to cancel claims for failure to do assessment work. Of course, no adjudication can be said to be res judicata if it was rendered by a tribunal not having jurisdiction.[18] But the Court did not hold that the Department lacked jurisdiction. To the contrary, it was held that:

There was authority in the Secretary of the Interior, by appropriate proceedings, to determine that a claim was invalid for lack of discovery, fraud, or other defect, or that it was subject to cancellation by reason of abandonment.[19] 295 U.S. at 645 [41] And on the question of the Secretary's authority to cancel for failure to perform assessment work, the Court stated:

We think that the Department's challenge, its adverse proceedings, and the decision set forth in the bill went beyond the authority conferred by law. 295 U.S. at 643.

It is on the basis of this language that appellants contend that the Secretary was without jurisdiction to challenge these claims. A close examination of that language, the history of the litigation and related decisions requires the rejection of appellants' contention.

Earlier, in Wilbur v. Krushnic, 280 U.S. 306 (1930), the Court had concluded that the Department could not cancel claims upon the ground of failure to do assessment work following the resumption of work. The Court did not deny the Secretary's jurisdiction. In fact, it af-

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[18] Compare, Best v. Polk, 85 U.S. (18 Wall.) 112 (1873), with, Minter v. Cromelin, 59 U.S. (18 How.) 89 (1856). And compare, Doolan v. Carr, 125 U.S. 618 (1887), with, Quinby v. Conlan, 104 U.S. 420 (1882). And see, American School of Magnetic Healing v. McAnnulty, 187 U.S. 94 (1902).

[19] Citing Cameron v. United States, 252 U.S. 450, 460 (1920); Cole v. Ralph 252 U.S. 286 (1920); Black v. Elkhorn Mining Co., 163 U.S. 445, 450 (1896); Brown v. Gurney, 201 U.S. 184, 192, 193 (1906); Farrell v. Lockhart, 210 U.S. 142, 147 (1908).

firmed his full authority to consider the case but found that he had ". . . interpreted and applied a statute in a way contrary to its explicit terms . . .".[20] In explaining the effect of the Secretary's error in contruing the statute,[21] Roberts v. United States, 176 U.S. 221 (1900), was quoted as follows:

[42] Every statute to some extent requires construction by the public officer whose duties may be defined therein. Such officer must read the law, and he must therefore, in a certain sense, construe it, in order to form a judgment from its language what duty he is directed by the statute to perform. . . . 176 U.S. at 231.[22]

A clear analogy *exist* in the principles applicable to the public lands. Cameron v. United States, 252 U.S. 450 (1920). In the Cameron case the Court stated:

By general statutory provisions the execution of the laws regulating the acquisition of rights in the public lands and the general care of these lands is confided to the Land Department, as a special tribunal; and the Secretary of the Interior, as the head of the Department, is charged with seeing that this authority is rightly exercised to the end that valid claims may be recognized, invalid ones eliminated, and the rights of the public preserved. 252 U.S. at 459-60.[23]

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[20] 280 U.S. at 319.

[21] The Mineral Leasing Act of 1920, 41 Stat. 451, 30 U.S.C., sec. 193.

[22] See also, United States ex rel. Ness v. Fisher, 223 U.S. 683 (1921); and Decatur v. Paulding, 39 U.S. (14 Pet.) 497 (1840).

[23] Citing Rev. Stat., secs. 441, 453, 2476; United States v. Shurz, 102 U.S. 378, 395 (1880); Lee v. Johnson, 116 U.S. 48, 52 (1885); Knight v. United States Land Ass'n. 142 U.S. 161, 177, 181 (1891), Riverside Oil Co. v. Hitchcock, 190 U.S. 316 (1903). The nature and extent of the Department's jurisdiction over the disposition of public lands, and particularly under the mining laws, was more recently discussed in Duguid v. Best, 291 F. 2d 235 (9th Cir. 1961), in the following terms:

It is undisputed that the Congress has granted to the Secretary of the Interior general supervisory authority over public business relating to public lands, including mines.

. . . there can be no question as to the power and authority of the Secretary of the Interior, under the grant of authority to super-

[43] And further:

True, the Mineral Land Law does not itself confer such authority on the Land Department. Neither does it place the authority elsewhere. But this does not mean that the authority does not exist anywhere, for, in the absence of some direction to the contrary, the general statutory provisions before mentioned vest it in the Land Department. 252 U.S. at 461.[24]

These principles were most recently reiterated by the Supreme Court in Best v. Humboldt Mining Co., 371 U. S. 334, 337 (1963).

In United States v. Winona & St. P. R. Co., 67 Fed. 848 (8th Cir. 1895), aff'd., 165 U. S. 463 (1897), the Court of Appeals set forth the following test for determining whether the Land Department had jurisdiction over the subject matter with which it purports to deal:

Jurisdiction of the subject-matter is the power to deal with the general abstract question, to hear the particular facts in any case relating to this question, and to determine whether or not they are sufficient to invoke the exercise of that power. *The test of jurisdiction is whether the tribunal has power to enter upon the inquiry, not whether its conclusion in the course of it is right or wrong.*[25] (Emphasis supplied.) 67 Fed. 959-60.

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vise public business on public lands, including mines, to initiate through the subordinate Bureau of Land Management a contest in order to see "that valid claims on public land may be recognized, invalid ones eliminated, and the rights of the public preserved." 291 F. 2d at 241.

[24] See also Cole v. Ralph, 252 U.S. 286 (1920), Farrell v. Lockhart, 210 U.S. 142 (1908), Brown V. Gurney, 201 U.S. 184 (1906); and Black v. Elkhorn Mining Co., 163 U.S. 455 (1896). And see generally, Standard Oil Co. of California v. United States, 107 F. 2d 402 (9th Cir. 1940).

[25] See also, United States v. Northern Pac. R. Co., 95 Fed. 864 (8th Cir. 1899), aff'd., 177 U.S. 435 (1900) and Foltz v. St. Louis & S.R.Ry. Co., 60 Fed. 316 (8th Cir. 1894). And see King v. McAndrews, 111 Fed. 860 (8th Cir. 1901), wherein the court stated the principle as follows:

The test of jurisdiction is not right decision, but the right to enter upon inquiry and to make some decision. [Citations] Hence

[44] Having concluded that the Secretary or the Land Commissioner had jurisdiction over the subject matter of the claims presently in dispute, and that they had the necessary authority to enter upon the inquiry as to the validity of the claim, we have only to determine the ultimate effect of an error of law committed by these officials in the exercise of this authority. In this regard, we do not question that the appellants or their predecessors in interest could have invoked judicial review of the Department's decisions under applicable precedent,[26] even though the time within which the claimants could have appealed to the Secretary had expired. The claimants, following the decision in Ickes v. Virginia-Colorado Development Corporation, supra, had at least two alternatives open to them to protect their claims. They could have petitioned the Secretary to exercise his supervisory authority to recall and vacate the Land Commissioner's cancellation of the claim as he had done in The Shale Oil Company, supra, [45] or they could have sought relief in the courts in proper proceedings instituted for that purpose.[27] The Claimants did neither.

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a patent evidencing an erroneous decision of a question of law or a mistaken determination of an issue of fact, which the department was vested with the power, and charged with the duty, to decide, is as impervious to collateral attack as one which is the result of correct conclusions. 111 Fed. at 864.

[26] See e.g., El Paso Brick Co. v. McKnight, 233 U.S. 250 (1914), wherein the Court held that an order erroneously issued by the Department refusing a patent for a mining claim could not deprive the claimant of vested rights" . . . [f]or while the General Land Office had power of supervision over the acts of the local officers, and could annul entries obtained by fraud or made without authority of law, yet, *if the Department's cancellation was based upon a mistake of law, its ruling was subject to judicial review when properly drawn in question in judicial proceedings*, inasmuch as the power of the land office is not unlimited, nor can it be arbitrarily exercised so as to deprive any person of land lawfully entered and paid for." 233 U.S. at 257-58. (Emphasis supplied.)

[27] See e.g., Sanford v. Sanford, 139 U.S. 642 (1891); Shepley v. Cowan, 91 U.S. 330 (1876); Silver v. Ladd, 74 U.S. (7 Wall.) 219 (1869). In Sanford v. Sanford, supra, the court said:

. . . where the matters determined are not properly before the Department, or its conclusions have been reached from a miscon-

Since the judicial relief which was available to the claimants was equitable in nature, it was incumbent upon them to seek judicial relief within a reasonable time after the Supreme Court, in the Virginia-Colorado Development Corporation case, had determined that the concellations by the Department were erroneous. Otherwise, the claimants' judicial remedy would be subject to the equitable defenses of estoppel and laches unless it were clearly shown that the decision of the Department was void ab initio.

[46] When, as here, the administrative officer has acted within his jurisdiction and a judicial review of such action has not been sought on a timely basis, the principles of estoppel, laches and res judicata are merged in the doctrine of finality of administrative action and are operative to bar appellants' claim for relief. This conclusion is in accord with the principles set forth in the several recent cases discussed above, all of which involved oil shale placer claims.[28] The following language, used by the court in Gabbs Exploration Co. v. Udall, supra, in rejecting similar claims, is particularly pertinent here:

Here neither plaintiff nor its predecessors in interest took timely action to have the wrong righted, and plain-

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struction by its officers, of the law applicable to the cases before it, and it had thus denied to parties rights which, upon a correct construction, would have been conceded to them, or where misrepresentations and fraud have been practiced, necessarily affecting its judgment, *then the courts can in a proper proceeding*, interfere and control its determination so as to secure the just rights of parties injuriously affected. 139 U.S. at 647. (Emphasis supplied.)

See also, Moffat v. United States, 112 U.S. 24 (1884); Bernier v. Bernier, 147 U.S. 242 (1893); Moore v. Robbins, 96 U.S. 538 (1878); Johnson v. Towsley, 80 U.S. (13 Wall.) 72 (1871); Lindsey v. Hawes, 67 U.S. (2 Black) 554 (1963); Lytle v. Arkansas, 63 U.S. (22 How.) 193 (1860); Garland v. Wynn, 61 U.S. (20 How.) 6 (1857); Barnard's Heirs v. Ashley's Heirs, 59 U.S. (18 How.) 43 (1856); Cunningham v. Ashley, 55 U.S. (14 How.) 377 (1852).

[28] See Langdon H. Larwill, A-28697 (May 16, 1963); Gabbs Exploration Co., 67 I.D. 160 (1960); aff'd Gabbs Exploration Co. v. Udall, 315 F. 2d 37 (D.C. Cir. 1960); Garfield County Exploration Co., A-28351 (August 30, 1960) J. C. Nelson, 64 I.D. 103 (1957). See also, Charles D. Edmonson, 61 I.D. 355 (1954, and cases cited therein.

tiff cannot complain of the Secretary's failure to reopen the case. It is significant also that in all the cases cited to us in which a prior decision was reopened the longest period elapsing before reconsideration was three years. Here twenty-seven years have elapsed between the alleged wrong (1929) and plaintiffs attempt to have it corrected (1956).

[47] There might be some reason to impel the Secretary to reopen a prior decision in order to purge an incorrect determination, but the passage of time might prevent or greatly hinder a proper determination of the initial question, in which case it would be inappropriate for him to reopen the case even though he retains jurisdiction over the land in dispute . . . 315 F. 2d at 41.[29]

It is evident that the Secretary or the Land Commissioner, in the Krushnic case, in the Virginia-Colorado Development Corporation case, [48] and in the cases before us in this appeal, had the duty, the responsibility and, necessarily then, the jurisdiction to construe the statute. The construction placed upon the statute was appealed in Krushnic and in Virginia-Colorado Development Corporation, and the contention of the appellant that the Secretary erred was upheld. However, in the cases before us, appellants cannot complain after nearly 30 years of silence, inaction, and acquiescence. Neither they nor their ". . . predecessors in interest took timely action to have the wrong righted. . . ." Gabbs Exploration Co. v. Udall, 315 F. 2d at 41.

Past Administrative Practice

Finally, the appellants contend that, following the decision in Ickes v. Virginia Colorado Development Cor-

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[29] The court also observed that:

The Department of the Interior, which has recognized the right of the Secretary to reconsider certain prior decisions, has also recognized that there must be some time limit on such reconsideration. As Assistant Attorney General Van Devanter said in Aspen Consolidated Mining Co. v. Williams, 27 L.D. 1, at 11:

"The parties remain the same and the one complaining of the former decisions has taken timely and decisive action to have the alleged wrong corrected." 315 F. 2d at 40-41.

poration, supra, and until the Manager's decision in February, 1962, rejecting their applications, the United States has consistently recognized the validity of the subject mining claims. They contend that there has been a long-standing, continuous and consistent administrative interpretation and application of the Virginia-Colorado Development case beginning with the Department's decision in The Shale Oil Company, supra. In this regard, the appellants rely upon certain letters written by officers of the Land Department which expressed the view [49] that the previous decisions of the Land Commissioner canceling oil shale placer claims were void and had no effect on the claim.[30]

The argument advanced by the appellants is not based on the facts. While some officials of the Department may have expressed the view that the original cancellations were void and of no effect, at the same time, action was taken with respect to the subject land which was entirely inconsistent with the recognition of valid and subsisting claims.

On April 15, 1930, pursuant to Executive Order No. 5327, all oil shale deposits owned by the United States were withdrawn, subject to valid existing rights, from lease or other disposal, except [50] for application for patent under the mining laws for metalliferous mining

[30] The following documents were submitted by the appellants as evidence of the Department's position:

1. Letter of July 29, 1935, from the Commissioner of the General Land Office to the Register, Denver, Colorado (attached as Appendix C-1).

2. Letter of April 22, 1963, from Ida Dere, Grand Valley, Colorado, (then owner of the Lucy Agnes Nos. 1-2 oil shale placer claims), to the Commissioner, General Land Office (attached as Appendix C-2).

3. Letter of May 4, 1936, from the Commissioner, General Land Office, to Ida Dere, Grand Valley Colorado (attached as Appendix C-3).

4. Letter of July 4, 1944, from the Commissioner, General Land Office, to Mr. W. Porter Nelson, Denver, Colorado. (attached as Appendix C-4).

5. Letter from the Commissioner, General Land Office, to Mr. Edward Altenbern, DeBeque, Colorado. (attached as Appendix C-5).

6. Letter of October 31, 1935, from the Acting Secretary of the Interior to the Secretary of the Navy. (attached as Appendix C-6).

claims or application based on claims initiated prior to the date of the withdrawal. The withdrawal lands were reserved for purposes of investigation, examination and classification. See Instructions, Circular No. 1220, 53 I.D. 127 (1930). Among the lands included in the withdrawal are those here under consideration as indicated in the instructions dated April 22, 1931, from the Commissioner of the General Land Office to the Register, Denver, Colorado, which listed among the subdivisions in Colorado covered by Executive Order No. 5327 all of secs. 7 to 36, T. 4S., R. 99 W., 6th P.M.

Executive Order No. 5327 above-mentioned, attached to the lands here under consideration as a secondary claim and operated to withdraw them from the public domain when the determination that the mining claims were null and void for failure to do assessment work became final, since, on the termination of the mining locations, possessory title to the lands reverted to the United States. See Cameron v. United States, 252 U.S. 450 (1920), Gabbs Exploration Company, 67 I.D. 160, 169 (1960); Solicitor's Opinion, 55 I.D. 205, 208 (1935). And see, Vanadium Corporation of America, et al., A-26914 (September 8, 1954). As a result of the decisions of the Land Commissioner in 1930 and 1931 declaring these claims null [51] and void for failure to do assessment work, Executive Order No. 5327 was operative to exclude all subsequent entries thereon, except as permitted by the order.

On February 6, 1933, Executive Order No. 6016 authorized the issuance of oil and gas leases under the Mineral Leasing Act on lands withdrawn by Executive Order No. 5327.

Pursuant to the later Executive Order, the Department has issued numerous oil and gas leases and the rights of the third party lessees have intervened. Some of the oil and gas leases are still outstanding and proceedings have been instituted under the Multiple Mineral Development Act (Act of August 13, 1954, as amended (30 U.S.C., sec. 527)), to determine the rights as between oil shale placer claimants and lessees under oil and gas leases issued by the United States. Such pro-

ceedings have been suspended pending the outcome of the subject appeals.

The important point here is that, on many of the tracts in question, the United States, acting largely by and through this Department, has, for some 25 years since the cancellation of the oil shale placer claims, exercised exclusive control over the land and has permitted third parties to acquire rights therein. In view of these facts, the assertion on appeal that the United States or the Secretary [52] of the Interior has recognized the validity of these mining claims and has not taken action which is inconsistent therewith, is without support.

But even assuming, arguendo, that a long-standing continuous and consistent Departmental recognition of these claims is shown, such a showing would not entitle the appellants to patents on these claims. For reasons heretofore stated, the validity of these claims was not established by the decision of the Department in The Shale Oil Company case, supra, nor by any subsequent administrative or judicial action, and any administrative practice to the contrary would have been clearly erroneous. Administrative practice, however long-standing and consistent, is not controlling when it is clearly erroneous. County of Marin v. United States, 356 U.S. 412 (1958); Fishgold v. Sullivan Drydock & Repair Corp., 328 U.S. 275 (1945); Burnet v. Chicago Portrait Co., 285 U.S. 1 (1932); Webster v. Luther, 163 U.S. 331 (1896); Merritt v. Camoner, 137 U.S. 542 (1890); United States v. Graham, 110 U.S. 219 (1884); Swift Company v. United States, 105 U.S. 691 (1882). And see Solicitor's Opinion, 68 I.D. 372 (1961), and cases cited therein.

Furthermore, the application of doctrine of administrative practice or construction is ". . . restricted to cases in which the construction involved is really one of doubt *and where those to be affected* [53] *have relied on the practical construction, and rights have accrued by reason of such reliance.*" Studebaker v. Perry, 184 U.S. 258, 269 (1902).[21] (Emphasis supplied.) Here the appellants have attempted to demonstrate the existence of a long-

[21] See generally, Annot., 73 L. Ed. 322 (1928), and, Annot., 84 L. Ed. 28 (1939).

continued practice by this Department in recognizing the validity of their claims. In support thereof, they have submitted the documentation above-mentioned.[32] Yet there is no clear showing that any of the appellants knew of or relied upon any of these documents at the time they acquired an interest in their claims. Indeed, it appears that the existence of such documents became known to the appellants only after their claims were challenged and their patent applications rejected by the Land Manager in 1962. Under these circumstances, no rights have accrued to the appellants by reason of the alleged Departmental practice.

Summary

In summary, we have found (1) that the Secretary and his duly authorized agent, the Land Commissioner, had jurisdiction to enter upon inquiry as to the validity of oil shale placer claims under the [54] applicable statutes; (2) that they had the jurisdiction to construe such statutes in defining their authority; (3) that in the exercise of this function they may have erred in canceling claims including some of the claims upon which the patent applications in the present case are based; (4) that these cancellations were not appealed from by the appellants or their predecessors in interest; (5) that neither the appellants nor their predecessors in interest sought to attack these decisions for over 25 years. We conclude that, on the principles of res judicata, finality of administrative action, and laches, the said decisions of the Land Commissioner and the Secretary of the Interior are binding on the parties thereto and their successors in interest insofar as these claims were actually canceled in the original contest proceedings in which the then-owners of the claims were properly served with notice of contest and provided an opportunity for a hearing respecting the validity of the claim.

As heretofore mentioned, the following claims were canceled in contest proceedings in which the then-owners of the claims participated, thus eliminating any question

[32] See footnote 30, supra.

concerning the sufficiency of or defects in the issuance of notice:

Claim	Patent Application	Contest
Carbon Nos. 1-4	Colo. No. 030979	No. 12029
Elizabeth Nos. 1,2,4-12	Colo. No. 030979	No. 12029
Southeast	Colo. No. 028751	No. 12972
Northeast	Colo. No. 028751	No. 12972
Northwest	Colo. No. 028751	No. 12972
Oyler Nos. 1-4	Colo. No. 012327	No. 12039
Jack Pot Nos. 4-11	Colo. No. 045092	No. 13038

[55] As to these claims, the decisions of the Land Manager rejecting applications for patents are hereby affirmed.

As to all other claims involved in this appeal, the final order affirming or reversing the decision of the Land Manager will be held in abeyance pending a determination of the sufficiency of notice of contest in the contest proceedings in which the claims were canceled. The appellants holding such claims who wish to pursue the contention that their claims were canceled without compliance with the requirements of notice, are hereby granted 60 days within which to submit materials relating solely to such contention. Thereupon, a determination regarding the sufficiency of notice will be made and a final order entered on the appeal. If necessary, hearings will be ordered to resolve any factual questions which remain unresolved on the record. Appellants who do not submit such materials shall be considered to have conceded that the Departmental records accurately reflect the facts regarding the issuance of notice in the contest proceedings and the determination will be made on the basis of the present record.

This decision is rendered and the action herein set forth is taken pursuant to the authority delegated to the Solicitor by the Secretary of the Interior (210 DM 2.2A(4)(a); 24 F.R. 1348).

Frank J. (illegible)
Solicitor

[56]

APPENDIX A

Appeal No.	Appellant	Colorado Serial No.	Manager's Decision
A-29560	Union Oil Co. of California	07667	February 16, 1962
		09072	February 16, 1962
	Pacific Oil Company	012327	February 16, 1962
	Weber Oil Company	014671	February 16, 1962
	Tell Ertl	016334	February 16, 1962
	Tell Ertl Henry L. Price Silmon Smith Charles Holmes	016671	February 16, 1962
	Gabbs Exploration Company	018673	February 23, 1962
	Dwight S. Young	022459	February 16, 1962
	John W. Savage	022460	February 16, 1962
	Charles H. Prien	022461	February 16, 1962
	Barnette T. Napier Grace A. Savage Maude B. Farnum John W. Savage John R. Farnum, Jr. St. Clair Napier Catlin William H. Farnum, Jr. Joan L. Savage Neil S. Mincer	028751	February 16, 1962
	Energy Resources Technology Land, Inc.	029427	February 16, 1962
		029428	February 16, 1962
		031342	February 16, 1962

[57]

A-29560	Wastach Development Company Joseph B. Umbleby	030979	February 16, 1962
	John W. Savage	034270	February 16, 1962
		034271	February 16, 1962
	Harlan H. Hugg Dorothy D. Hugg	045092	February 16, 1962

APPENDIX B

(Circular No. 460) Manner of Proceeding in Contests Initiated Upon A Report By A Represenattive Of The General Land Office

Department of the Interior General Land Office Washington, D. C., February 26, 1916.

To Special Agents, and Registers and Receivers, United States Land Offices:

The following rules are prescribed for proceedings in contests initiated upon a report by a representative of the General Land Office. All existing instructions in conflict herewith are superseded:

1. The purpose hereof is to secure speedy action upon claims to the public lands, and to allow claimant, entryman, or other claimant of record, opportunity to file a denial of the charges against the entry or claim, and to be heard thereon if he so desires.

2. Upon receipt of a report this office will consider the same and determine therefrom whether the facts stated, if true, would warrant the rejection or cancellation of the entry or claim.

3. Should the charges, if not disputed, justify the rejection or cancellation of the entry or claim the local officers will be duly notified thereof and directed to issue notice of such charges in the manner and form hereinafter provided for, which notice must be served upon the entrymen and other parties in interest shown to be entitled to notice.

4. The notice must be written or printed and must refer to the letter from this office by initial and date, as authority for issuing the notice, and must state fully the charges as contained in said letter; also the number of the entry or claim, subdivision of land involved, name of entryman or claimant or other known parties in interest.

5. The notice must also state that the charges will be accepted as true, (a) unless the entryman or claimant

files in the local office within thirty days from receipt of notice a written denial, under oath, of said charges, with an application for a hearing, (b) or submits a statement of facts rendering the charges immaterial, (c) or if he fails to appear at any hearing that may be ordered in the case.

6. Notice of the charges may in all cases be served personally upon the proper party by any officer or person or by registered letter mailed to the last address of the party to be notified, as shown by the record, and to the post office nearest to the land. When it is necessary to serve notice on the unknown heirs of a person in interest, the same must be addressed to that person at his address of record and also at the post office nearest the land. Proof of personal service shall be the written acknowledgement of the person served or the affidavit of the person who served the notice, attached thereto, stating the time, place, and manner of service. Proof of service of notice by registered letter shall consist of the report of the register and receiver who mailed the notices, accompanied by the post office registry return receipts, or the returned unclaimed registered letters.

7. If a hearing is asked for, the local officers will consider same and confer with the Chief of Field Division relative thereto and fix a date for the hearing, due notice of which must be given entryman or claimant. The above notice may be served by registered mail. By ordinary mail, a like notice will be sent to the Chief of Field Division.

8. The Chief of Field Division will duly submit, upon the form provided therefor, to this office, an estimate of the probable expense required on behalf of the Government. He will also cause to be served subpoenas upon the Government witnesses and take such other steps as are necessary to prepare the case for prosecution.

9. The Government must appear with its witnesses on the date and at the place fixed for said hearing, unless there is reason to believe that no appearance on behalf of the Government will be required. The officer in charge of hearings must, therefore, keep advised, as far as possible, as to whether the defendant intends to appear at

the hearing. The Chief of Field Division may, when present, conduct the hearing on behalf of the Government.

10. If the entryman or claimant fails to deny the charges under oath and apply for a hearing, or to submit a statement of facts rendering the charges immaterial, or fails to appear at the hearing ordered without showing good cause therefor, such failure will be taken as an admission of the truth of the charges and will obviate the necessity for the Government submitting evidence in support thereof, and the register and receiver will forthwith forward the case with recommendation thereon to the General Land Office and notify the parties by registered mail of the action taken. In cases finally closed upon default of claimant if application to reopen any case is filed with the register and receiver they will forthwith forward same with recommendations to the General Land Office.

11. Upon the day set for the hearing and the day to which it may be continued the testimony of the witnesses for either party may be submitted, and both parties, if present, may examine and cross-examine the witnesses, under the rules, the Government to assume the burden of proving the charges, unless otherwise ordered.

12. If a hearing is had, as provided in paragraph 11, the local officers will render their decision upon the record, giving due notice thereof, in the usual manner. When decision is adverse to the Government, notice thereof must be sent to the Chief of Field Division.

13. Appeals or briefs, if filed, must be in accordance with the rules, but need not be served upon the Chief of Field Division or Government representative in charge of the hearing.

14. The above proceedings will be governed by the rules of practice. All notices served on claimants or entrymen must likewise be served upon transferees or mortgagees.

Very respectfully,

Clay Tallman, Commissioner

Approved: Andrieus A. Jones,
First Assistant Secretary.

[59]

APPENDIX C-1

(Words illegible)

2 x 1 x S. A. C.

United States Department of the Interior General Land Office Washington 7/29/35

In Reply Please Refer to (word illegible) 1290989 "N" CRB Mountain States Mineral Land Company, et al.

Contest No. 11823 dismissed. Case closed. Instructions.

Register, Denver, Colorado.

Sir: July 10, 1930, adverse proceedings were directed against the validity of the Liberty No. 1, Oil Shale Placer, SE, Sec. 22, T. 2 S., R. 95 W., 6th P. M., on the charge that annual assessment work was not performed on the claim for the year ending July 1, 1930, and that work has not been since resumed.

After notice issued and answer denying the charges was duly filed, hearing was dul before a United States Commissioner at Glenwood Springs, Colorado, on June 11, 1932, at which the Government appeared by attorney and no other appearances were noted. April 12, 1933, you transmitted the record to this office without decision. [60] On June 3, 1935, the Supreme Court decided in the case of Ickes vs. Virginia-Colorado Development Corporation, that the United States has no right to declare oil shale placers null and void because of failure on the part of the claimants to perform annual assessment work thereon, and on June 24, 1935, the Department in the case of the Shale Oil Company, Denver, mineral application 042552, recalled and vacated its decision in the Virginia-Colorado Development Corporation case, and overruled its previous decisions in conflict with the Supreme Court's decision.

From the foregoing it is clear that the adverse proceedings in this case are invalid for any purpose. Accordingly, contest No. 11823 is dismissed and the case is closed. Advise the parties hereof.

Several contest cases involving oil shale placers are now pending in your office. In view of the decisions referred to hereinabove, you are instructed to close out on your records and transmit to this office all contest cases involving solely the question of a failure to perform annual assessment work, and failure to resume work on oil shale placers prior to the date of a challenge by the United States to the valid existence of the claims, where no answer has been filed by the claimants. In all cases involving only the question of annual assessment work where (word illegible) has been filed by any of the contestees you will transmit the records to this office without action.

You will retain in your files, subject to further instructions from this office all contest cases involving oil shale placers wherein charges have been made involving other questions than that above stated, even if a charge has also been made in that regard.

In your response hereto refer to this letter by date and number.

Very respectfully,

Sgd. Fred W. Johnson
Commissioner.

LMN 7/18

[62]

APPENDIX C-2

Box 477, Grand Valley, Colorado. April 22, 1936
51A27 3-A110 Box 546145 1282120

Commissioner General Land Office, Washington,D.C.

Please advise the undersigned Ida Dere,why Lucy Agnes Oil Shale Claims Nos.1and2. (being N¼,N ½ and S ½ N ½ , Sec 4, Township 5 South R 95 West) should not be clear listed from the charge of failure to do and preform annual assessment work Being contest No. 11750 in keeping with and per tenor of your letter dated 7/29/35, which ordered the clear listing of Liberty Oil Shale Claim No. 1, being contest No. 11823, addressed to Register of Denver Land Office.These two claims were

valid existing claims on 2/25/20, with several years assessment work having since been done. The field Division Inspectors convinced me on or about the year 1927or 28,that it would be useless to go to the expense of answering the Government contest,but the Supreme Court Decision of 6/3/35, seemingly has set at naught all of these formrr challenges, where the only question was lack of assessment work.Please clear list my said claims or advise me what must be done to get them clear listed.

(Words illegible)

Yours Respectfully,

(Stamp illegible)

(Words illegible) Ida Dere
(Words illegible) Grand Valley,
Colorado

[63]

APPENDIX C-3

Address Only The Commissioner of the General Land Office

United States Department of the Interior General Land Office Washington May 4 - 1936

In Reply Please Refer To 1283120 "N" CRB Information

Ida Dere, Box 477, Grand Valley, Colorado

Madam: Replying to your letter of April 22, 1936, you are advised the records of this office show that the Lucy Agnes Nos. 1 and 2 oil shale placers were declared null and void by this office on August 18, 1933, because of failure of the owners of the claims to file answer denying the charge that annual assessment work had not been performed on the claims for the year ending July 1, 1929, and that work had not been since resumed.

On June 3, 1935, the Supreme Court of the United States held in the case of Ickes vs. Virginia-Colorado Development Corporation, that the oil shale placer claimant,

a party in that case, lost no rights by failure to do annual assessment work on its claims and that such failure gave the Government no right to declare the claims null and void. It further held that proceedings brought by the Government based solely on such a charge went beyond the authority conferred by law and did not affect the validity of the claims. In view of this holding of the Supreme Court, this office considers that it would be unnecessary to revoke its previous decision holding the Lucy Agnes claims to be null and void. That decision being without authority of law is without any effect on the title arising from the location of the claims.

Very respectfully

Fred W. Johnson
Commissioner.

4-30 mc

[65] APPENDIX C-4

In Reply Refer to: 1069641 "N"

United States Department of the Interior General Land Office Washington Jul 4 - 1944

Mr. W. Porter Nelson, 607 California Building, Denver 2, Colorado.

My dear Mr. Nelson: I have your letter of June 15 asking for the present status of the contest No. 12473 directed against the Sid Nos. 1 to 22 oil shale placer locations by our letter No. 1069641 of July 16, 1930.

The letter referred to directed new adverse proceedings against the locations mentioned on the charge "That annual assessment work to the value of $100 was not performed upon each or any one of the Sid Nos. 1 to 22 inclusive, oil shale placers for the year ending July 1, 1930, and that work has not been since resumed." The letter also directed service of notice of the charge on E. B. McNair and George W. Habberset, the record title holders of the locations.

On September 16, 1930, answer was filed in the Denver Land Office by E .B. McNair in which no denial is made of

the allegations contained in the charge, but contestee contended that the Sid Nos. 1 to 22 claims having been located prior to the leasing act of February 25, 1920, constituted valid claims existent February 25, 1920, and maintained in compliance with the laws under which they were initiated, etc.

By our letter of June 24, 1931, to the Register it was stated that as the answer merely objected to the charge without denying the allegations therein, the contestees were allowed 30 days from notice in which to file a proper answer or appeal to the Secretary of the Interior and that if no action was taken within the time allowed the locations would be declared null and void without further notice. On August 25, 1931, the Register reported no action taken and transmitted evidence of service consisting of registry return receipt signed by E. B. McNair July 24, 1931. Accordingly by our letter of October 12, 1931, to the Register the locations were declared null and void as to the interest therein of E. B. McNair and the Register was directed to serve new notice of the decision of July 16, 1930, on George W. Habberset. The records show that such notice was served October 24, 1931, and in his letter of December 1, 1931, the Register reported that no answer was filed by Habberset within the time allowed. Accordingly by our letter of January 7, 1932, to the Register it was held that "The failure of the contestee to file answer denying the charge is taken as an admission by him of the truth thereof, in view of which the Sid Nos. 1 to 22, inclusive, oil shale placer locations are declared null and void in their entirety and the United States has taken possession of the land within the claims for its own uses and purposes." The case was also closed by that letter.

[66] However, in the case of the Shale Oil Company (55 I.D. 287) the Department hold, in view of the decision of the Supreme Court in the case of The Virginia-Colorado Development Corporation (295 U.S. 639) that the adverse proceedings in that case, based on charges of failure to do annual assessment work must be held as without authority of law and void.

Very truly yours,

Fred W. Johnson
Commissioner.

[67] APPENDIX C-5

Address Only The Commissioner of the General Land Office

United States Department of the Interior General Land Office Washington Jul 17 1935

In Reply Please Refer To Denver 042108 "N" CRB Information.

Mr. Edward Altenberry De Beque, Colorado.

My dear Sir: Replying to your letter of June 25, 1935, addressed to the Register of the United States Land Office, Denver, Colorado, and referred here for reply, you are advised that on June 3, 1935, the Supreme Court of the United States held in the case of Ickes, Secretary of the Interior, vs. Virginia-Colorado Development Corporation that the oil shale claimant lost no rights by failure to do the annual assessment work on its claims, that such failure gave the Government no right to declare the claims null and void, and that the proceedings brought by the Government against the claims, based solely on that ground, went beyond the authority conferred by law and did not affect the validity of the claims. [68] Your entry is the only claim of record on the tract books of the land office and if any other persons claim the land it is incumbent on them to contest the entry, and should they do so the burden of proof that they have valid claims which have not been abandoned would be upon them.

In the event your homestead entry should be canceled after contest and hearing because of conflict with prior valid mining claims, you would have the right to apply for repayment of all fees and commissions paid by you in connection with your entry but no reimbursement will be made by the United States for any expenditures on improvements made for any purposes on the entry. So far as this office is concerned, no objection would be made by it to the removal of any such improvements by a homestead entryman after cancellation of his entry, but this should not be taken as authority for the removal of structures which are part of

the realty in violation of state laws and of the rights of other parties.

Very respectfully,

Fred W. Johnson
Commissioner.

7-16 edt

[69] APPENDIX C-6

The Secretary of the Interior Washington Oct 31 1935

The Honorable The Secretary of the Navy.

My dear Mr. Secretary: Reference is made to the letter of November 1, 1933, of Secretary Ickes, containing a list of oil shale placer mining claims, with descriptions of the land involved, situated within Naval Oil Shale Reserves Nos. 1 and 3 in Colorado and No. 2 in Utah, involved in adverse proceedings, and the status of each case.

The adverse proceedings involving all of the said claims were based upon a charge that annual assessment work had not been performed upon the claim or claims involved for a stated assessment year and that work had not been resumed thereon. You were informed in the above-mentioned letter that certain claims had been declared null and void in their entirety and others had been declared null and void to the extent of the interests of the parties served with notice, and that further action in all pending cases involving the question of assessment work on oil shale placers was suspended in this office pending a final decision in the courts upon the matter of the authority of this Department to attack the validity of oil shale placer claims upon the ground stated.

On June 3, 1935, the Supreme Court, in the case of Ickes vs. Virginia-Colorado Development Corporation, held that the United States is without authority to challenge the validity of an oil shale placer claim on account of failure to perform the annual assessment work, or to resume work, thereon. All previous action taken upon such charges in the cases referred to therefore is without effect and void. The status of the claims so far as this Department is concerned is that they are subsisting

claims which, if located on valid discoveries of mineral by qualified locators, aggregate the land against its subsequent withdrawal for Naval Oil Shale Reserves unless the claims have been abandoned.

Sincerely yours,

Charles West
Acting Secretary of the Interior.

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* * * *

[76] ANSWER

Defendant, Stewart L. Udall, Secretary of the Interior, by his attorneys, Lawrence M. Henry, United States Attorney, and Assistant United States Attorney, answers the complaint as follows:

First Defense

The complaint fails to state a claim upon which relief can be granted.

Second Defense

The United States, a sovereign not amenable to suit, is an indispensable party.

Third Defense

Defendant admits the allegations in the first 2 paragraphs of the introductory statement. Defendant is without information sufficient to form a belief with respect to whether the amount involved exceeds the sum of $10,000. The remaining allegations, in paragraphs 3 and 4 of the introductory statement, are conclusions of law which require no answer. Defendant specifically denies that the complaint establishes a cause of action within the grant of mandamus jurisdiction in 28 U.S.C. sec. 1361.

[77] First Claim for Relief

I. Defendant admits the allegations in paragraphs 1 to 10, inclusive, 12 and 15.

II. With respect to the allegations in paragraphs 11 and 13, the decisions referred to therein speak for themselves.

III. Defendant denies the allegations in paragraphs 14 and 17 to 20, inclusive. As applied to the allegations in the first claim for relief, defendant admits the allegations in paragraph 21.

IV. With respect to the allegations in paragraph 16, it is admitted that Umpleby and the other interested parties appealed to the Secretary from the decision of the Commissioner of the General Land Office dated July 23, 1930. On appeal, the Secretary, prior to the decision of the Supreme Court in Ickes v. Virginia-Colorado Development Corp., 295 U.S. 639, affirmed the cancellation of the claims. The decision cancelling these claims was at no time thereafter recalled or vacated by the Department of the Interior. The allegations in paragraph 16 not herein specifically admitted are denied.

Second Claim for Relief

I. Defendant adopts his answers to paragraphs 1 through 15 of the first claim for relief as his answer to paragraph 1.

II. The allegations in paragraphs 2 and 3 are denied.

[78] III. With respect to the allegations in paragraph 4, defendant admits that patents covering some oil shale placer claims which had been declared null and void for failure to do assessment work may have been issued between 1935 and 1960. Defendant denies the allegations in the first sentence in paragraph 4 not herein specifically admitted. Defendant is without information sufficient to form a belief with respect to the truth or falsity of the allegations in the second sentence of paragraph 4.

IV. Defendant denies the allegations in paragraphs 5, 7 and in the last sentence of paragraph 6. Defendant is without information sufficient to form a belief with respect to the truth or falsity of the allegations in the first sentence of paragraph 6.

Third Claim for Relief

I. Defendant adopts his answers to paragraphs 1 through 15 of the first claim for relief and to paragraphs

2 through 6 of the second claim for relief as his answer to paragraph 1.

II. Defendant denies the allegations in paragraph 2.

Fourth Claim for Relief

I. Defendant adopts his answers to paragraphs 1 through 15 of the first claim for relief and to paragraphs 2 through 6 of the second claim for relief as his answer to paragraph 1.

II. Defendant denies the allegations in paragraphs 2 and 10.

III. With respect to the allegations in paragraph 3, defendant states that in May, 1954, a meeting was held at Rifle, Colorado, attended by representatives of the Department of the Interior and by [79] members of the general public having an interest in oil shale development. One purpose of this meeting was to discuss the additional sampling and assay work needed to permit increased reliability of oil shale reserve estimates. The allegations in paragraph 3 not herein specifically admitted are denied.

IV. With respect to the allegations in paragraphs 4 and 8, defendant states that in 1957 plaintiffs submitted some assay information to officials of the Department and that this assay information may have been used in preparing a small chart set out at page 15 of the Bureau of Mines Report of Investigations 5614. The submission of this assay information had nothing to do with any issue relating to the validity of plaintiffs' claims and its submission was not accompanied by any statement or indication that the assayed material had been removed from claims that had previously been held null and void. The allegations in paragraphs 4 and 8 not herein specifically admitted are denied.

V. The allegations in paragraph 5 are admitted.

VI. With respect to the allegations in paragraph 6, defendant admits that in 1959 and 1960 letters were written to the Supervisor, U. S. Geological Survey, and to the then Secretary of the Interior, which letters objected to the formation of a federal oil and gas unit that would include claims described in a pending patent ap-

plication. Defendant denies that plaintiffs were the owners of valid oil shale placer mining claims.

VII. Defendant is without information sufficient to form a belief with respect to the truth or falsity of the allegations in paragraphs 7 and 9.

[80] Fifth Claim for Relief

I. In response to paragraph 1, defendant adopts his answers to the corresponding allegations in the first, second and fourth claims for relief.

II. Defendant denies the allegations in paragraphs 2 and 3.

Fourth Defense

The oil shale placer mining claims, with respect to which plaintiffs filed a patent application on September 8, 1959, were originally located in 1920 or earlier years. These claims were held null and void on November 29, 1930. Thereafter, no action was taken by plaintiffs to challenge the decision of November 29, 1930, nor was an application for a patent filed until September 8, 1959, forty years after filing of the claims and twenty-nine years after they were declared invalid. In the meantime, the United States, relying on the established invalidity of the claims, has entered into oil and gas leases covering the same areas and has otherwise administered the property as being free and clear of plaintiffs' claims. In view of the foregoing, plaintiffs, under ordinary principles of laches and estoppel, are estopped to maintain the present suit.

Wherefore, defendant demands that the complaint be dismissed.

Lawrence M. Henry
United States Attorney

James P. McGruder
Assistant United States
Attorney

Filed September 11, 1964

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* * * *

[232] JUDGMENT

This action was tried to the Court and the Court on December 21, 1966, filed a memorandum opinion and order.

It Is Ordered, Adjudged, and Decreed:

1. The decision by Solicitor of the Department of Interior on April 17, 1964, in Union Oil Company of California, et al., 71 I.D. 169 (1964), is reversed and is void and of no effect whatever as to the unpatented mining claims involved in this case which are located in Garfield County, Colorado, described as Carbon Nos. 1 through 5 and Elizabeth Nos. 1, 2, and 4 through 12.
2. The action by the Department of Interior, in a contest proceeding, Contest No. 12029, initiated by the Department in 1929, in which the above were declared invalid for failure to perform annual assessment work is void and of no effect whatever.
3. That Mineral Application Colorado 030979 for the patenting of the mining claims listed in paragraph 1 of this judgment is reinstated and remanded.

Dated, this 1st day of March, 1967.

By the Court:

William E. Doyle
United States District Judge

Approved as to form:

Fred M. Winner
Attorney for Plaintiffs

Lawrence M. Henry
United States Attorney for the
District of Colorado.

By David I. Shedroff
Assistant United States Attorney.
Attorneys for Defendant.

Filed March 1, 1967

[233] NOTICE OF APPEAL

Notice Is Hereby Given that the above-named defendant by its attorneys, Lawrence M. Henry, United States Attorney for the District of Colorado, and Richard T. Spriggs, Assistant United States Attorney for the District of Colorado, hereby appeals to the United States Court of Appeals for the Tenth Circuit from the final judgment entered herein by the United States District Court for the District of Colorado on the 1st day of March, 1967.

April 26, 1967.

Lawrence M. Henry
United States Attorney for the
District of Colorado

By Richard T. Spriggs
Assistant United States
Attorney for the District
of Colorado
Denver, Colorado 80202

Filed April 26, 1967

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* * * *

[237] CLERK'S CERTIFICATE

I. G. Walter Bowman, Clerk of the United States District Court for the District of Colorado, do hereby certify the foregoing pages numbered one (1) to two hundred thirty-six (236) inclusive, are the original pleadings, Orders, papers, and exhibits, in a case lately pending in this Court, wherein, Joseph B. Umpleby and Wasatch Development Company were plaintiffs, and Stewart L. Udall, Secretary of the Interior was the defendant, in Civil Action 8685.

In Testimony to the above, I do hereuno sign my name and affix the seal of said Court at the City and County of Denver, in said District, this 3rd day of October, 1967.

(Seal) G. Walter Bowman, Clerk

Filed May 16, 1968

CASE NO. 9583

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Pleas and proceedings before the Honorable William E. Doyle, Judge of the United States District Court for the District of Colorado, presiding in the following entitled cause:

BARNELLE T. NAPIER, GRACE A. SAVAGE, JOAN L. SAVAGE, MAUDE B. FARNUM, ST. CLAIR NAPIER CATLIN, WILLIAM H. FARNUM, JR., JOHN R. FARNUM, JOHN W. SAVAGE,and NEIL S. MINCER, GARDNER C. CATLIN, and ELIZABETH YOUNG FARNUM HINDS, PLAINTIFFS,

VS.

STEWART L. UDALL, SECRETARY OF THE INTERIOR, DEFENDANT.

No. 8691 Civil

[1] COMPLAINT

Plaintiffs, for cause of action herein, and for their Complaint, allege:

1. Plaintiffs, Barnette T. Napier and Grace A. Savage, are citizens of the State of California. Plaintiffs John L. Savage, Maude B. Farnum, St. Clair Napier Catlin, William H. Farnum, Jr., John R. Farnum, John

W. Savage and Neil S. Mincer, are citizens of the State of Colorado.

2. The defendant, Stewart L. Udall, here sued in his official capacity, is the duly qualified and acting Secretary of the Interior of the United States, having his official place of business at the seat of government in Washington, D. C., and as Secretary, is charged with the control, direction and supervision of all officers and employees of the Department of the Interior, the administration and enforcement of all laws relating to the public lands and to mining claims thereon, and the issuance of rules and regulations relating thereto.

3. This action arises under the Constitution, more particularly the Fifth Amendment, and the laws of the United [2] States, including 30 U.S.C. Sections 22-38, pursuant to which plaintiffs claim vested rights in and to certain oil shale placer mining claims, and involves both the rights of plaintiff to enjoy and possess said mining claims without regard to certain unauthorized and invalid Department of the Interior Contest proceedings hereinafter set forth, and the duty of the defendant owed to the plaintiffs to administer the laws under which plaintiffs claim said mining claims upon a proper construction of those laws, and more particularly to require defendant to issue land patents to plaintiffs to the mining claims involved in this action. The matter in controversy, exclusive of interest and costs, exceeds in value the sum of $10,000.00. Jurisdiction of this Court is invoked under 28 U.S.C. Sections 1331, 1361 and 1391; and under the Administrative Procedure Act (5 U.S.C. Sections 1001-1011).

4. This is an action to obtain an Order and a Judgment of this Court requiring the defendant to discharge his duty under the Mining Laws of the United States according to the requirements of those Statutes as interpreted by the Supreme Court of the United States.

5. Plaintiffs are the owners of the Northwest Placer Mining Claim, being the N½NW¼ and the SW¼NW¼ of Section 27, containing 120 acres, the Northeast Placer Mining Claim, being the NE¼ of Section 27, containing 160 acres, and the Southeast Placer Mining Claim, being

the SE¼ of Section 27, containing 160 acres, all in Township 7 South, Range 98 West of the 6th Principal Meridian, in the County of Garfield, State of Colorado.

6. That the District Court in and for the County of Garfield, State of Colorado, entered a decree quieting title in the above described claims in the plaintiffs herein on December 4, 1957, which decree is recorded in Book 305, at Page 554 of the records of Garfield County, Colorado.

7. That plaintiffs made application for mineral patent (M.E. C-028751) on June 1, 1959, and made payment of the purchase [3] price for the said oil shale placer mining claims to the United States Land Office on October 30, 1959. Plaintiffs have fully complied with all applicable laws and regulations and are entitled to have a patent issued to them covering said mining claim.

8. In 1931, the defendant's predecessor in office instituted and thereafter conducted Contest No. 12972 against the vested rights in and to the mining claims referred to in Paragraph 7 above, owned by plaintiffs and their predecessors in interest. The defendant's predecessors in office acted in this Contest through subordinate agents, including the Commissioner of the General Land Office and the Register of the Denver Land Office, all of whom were exercising the authority of the defendant's predecessors in office and were subject to their supervision and control at all times. The said Contest proceeding was based solely upon the charge that annual assessment work in the amount of $100.00 had not been performed upon or for the benefit of the above mining claims.

9. In initiating and conducting said Contest, the subordinate agents purported to act pursuant to Departmental Circular of February 26, 1916 (Circular No. 460) "Manner of Proceeding in Contest Initiated Upon a Report by a Representative of the General Land Office", 44 L.D. 572. The Commissioner and the Register, named as Contestees in the Contest persons they regarded as being the then owners of the mining claims and purported to effect service of Contest upon these Contestees. On September 21, 1931, an Answer was filed on behalf of Mrs. B. T. Napier, Miss St. Clair Napier, B. T. Nap-

ier, Jr., C. R. McCarthy, and W. H. Farnum, On December 23, 1931, the Commissioner purported to declare the said mining claims null and void for failure to perform annual assessment work

10. In the first case brought in the courts to challenge the authority and jurisdiction of the Interior Department and to inquire on behalf of the United States whether annual assessment work had been performed for the benefit of a mining claim, the Supreme Court of the United States held in Wilbur v. Krushnic, 280 U.S. 306 (1930), that failure to do annual assessment [4] work did not authorize the defendant's predecessors in office to declare mining claims null and void.

11. The Supreme Court of the United States in Ickes v. Virginia-Colorado Development Corp., 295 U.S. 639 (1935), held that no charge of failure to perform assessment work regardless of whether performance of the work had been resumed, could serve as a basis for invalidating mining claims, and that the Department's challeges of oil shale claims for failure to perform assessment work, its institution and conduct of Contest based on failure to perform assessment work, and its decisions such as that in Contest No. 12972 declaring claims null and void for failure to perform annual assessment work, went beyond the authority conferred by law upon the defendant's predecessors in office.

12. Following the decision in Ickes v. Virginia-Colorado Development Corp., supra, the defendant's predecessor in office decided and declared that all prior decisions declaring mining claims null and void for failure to perform assessment work, including Contest No. 12972, were null and void and had no effect upon the validity of mining claims. Such decision was publicly evidenced by among other things, the Department's decision in The Oil Shale Co., 55 I.D. 287 (1935), overruling all decisions holding the Department had jurisdiction to challenge mining claims for non-performance of assessment work and expressly recalling and vacating the Departmental instructions authorizing the renewal of assessment work Contests following the decision in Wilbur v. Krushnic, supra, in 1930. Pursuant to these decisions,

Contest No. 12972 was dismissed and closed adversely to the United States.

13. At no time prior to the termination of Contest No. 12972 had any of the owners of the above mining claims or anyone else made application to the defendant's predecessors in office for patents for the claims or for any other interests in the lands covered by the claims. The defendant's predecessors in office and their subordinates were therefore without authority of [5] law to enter upon said Contest and the Commissioner's decision in Contest No. 12972 was and is invalid.

14. The defendant and his predecessors in office have at all times lacked authority to inquire or decide whether assessment work has been performed. Consequently, the actions of the defendant and his predecessors in office in instituting Contest No. 12972 and in purporting to cancel the said mining claims referred to herein for failure to perform annual assessment work, were and are null and void and of no force or effect.

15. Subsequent to plaintiffs' filing of Patent Application on June 1, 1959, and payment of the purchase price on October 30, 1959, defendant and his predecessors in office were favorably processing said patent application until February 16, 1962, when the Manager of the Colorado Land Office of the Bureau of Land Management issued a decision, rejecting the Patent Application for said mining claims. A copy of said decision is marked as Exhibit "A" and attached hereto, incorporated herein by reference, and made a part hereof. The Manager's decision for the first time asserted on behalf of the defendant that decisions in the old assessment work contest barred the patenting of the mining claims involved in such Contests.

16. On appeal from the Manager's decision, the Solicitor of the Department of the Interior, acting pursuant to the direction and with the express authorization of the defendant, ruled on April 17, 1964, that although the decisions in the old Contest proceedings were erroneous in law, the defendant would now and in the future assert decisions in the assessment work Contests to bar the patenting of mining claims and by said deci-

sion, rejected the application of plaintiffs herein for patent to said claims.

17. At the time of instituting Contest No. 12972, defendant's predecessors in office, or their agents, served only those then owners of the claims who filed answer and did not serve the remaining owners of the claims either personally with notice of the Contest, nor did they follow the applicable [6] Departmental procedures for service of notice of Contest, which were set out in Circular No. 460. Only part of the Contestees ever entered in appearance in the Contest. At no time did the Department obtain personal jurisdiction over the remaining Contestees in said Contests. The decisions in the said Contests were and are of no force and effect. All Contestees and all the then co-owners of the said mining claims were indispensable parties without whose presence no valid judgment in said Contests affecting said claims could be entered.

18. After the said Supreme Court decision in Ickes v. Virginia-Colorado Development Corp., supra, the defendant's predecessors in office decided that all prior decisions invalidating oil shale claims for failure to perform annual assessment work, including the decision in Contest No. 12972, were null and void and had no effect on such claims.

19. During the period 1935 through 1962, the defendant, his predecessors in office and officials and employees of the Department of the Interior repeatedly and publicly affirmed that the decisions in the assessment work Contest proceedings, including Contest No. 12972, were void and of no effect and did not operate to invalidate or otherwise adversely affect the interests of the plaintiffs, their predecessors in interest and others similarly situated.

20. During the period 1935-1962, the defendant and his predecessors in office issued land patents covering at least 74,000 acres of oil shale claims which had been declared null and void in assessment work proceedings such as those here involved and which were in all respects a fact in law the same as the said mining claims herein referred to above, with full knowledge that such

contest proceedings had resulted in decisions adverse to the claims. The Department's consistent practice of issuing patents for oil shale claims which had purportedly been invalidated by assessment work proceedings, was widely known throughout the area in which the claims were located, and was known both to the [7] plaintiffs and to their predecessors in interest.

21. By reason of the facts set forth herein, the Department has duly adopted a rule of law, which cannot be retroactively altered, that the assessment work contest, including Contest No. 12972, had no affect on the validity of mining claims.

22. From 1935 until 1962, the plaintiffs or their predecessors in interest, both knew of and relied upon the consistent policy of the defendant and his predecessors in office of treating the decisions in the assessment work contests, including the decision in Contest No. 12972, as nullities with no force and effect. During that period, the defendant and his predecessors, through their authorized subordinates, made repeated representations to the plaintiffs, their predecessors in interest, their representatives, advisors, and neighbors, that the assessment work contests had no effect on the validity of mining claims, and the plaintiffs have justifiably relied upon such representations in the expenditure of time and money in acquiring, improving, and perfecting their rights to the said mining claims.

23. Since 1935, the defendant and his predecessors in office have treated the decisions in the old assessment work proceedings, such as Contest No. 12972, as nullities. The arbitrary and unreasonable change of position by the defendant on April 17, 1964, as shown by the decision attached hereto, marked Exhibit "B", and by reference incorporated herein and made a part hereof, pursuant to which the legally erroneous and long overruled decision in Contest No. 12972 was for the first time asserted to attempt to defeat the vested property rights of the plaintiffs, and said decision violates the duty owed by the defendant to the plaintiffs fairly and equitably to administer the Statutes of the United States relating

to public lands and the rules and regulations of the Department of Interior.

24. Defendant is wrongfully withholding patents on said claims from plaintiffs. Defendant has arbitrarily and capriciously refused to issue patents to plaintiffs on said mining claims.

25. Plaintiffs have exhausted all of their administrative remedies within the Department of Interior in respect to the matters set forth in this Complaint.

[8] Wherefore, plaintiffs demand that the Court adjudge, decree and declare:

1. To issue its mandatory order compelling defendant to take such action as is necessary to issue patents to the plaintiffs to the said Northwest Placer Mining Claim, the Northeast Placer Mining Claim and the Southeast Placer Mining Claim.

2. That the patent applications of plaintiffs hereinbefore filed be processed by defendant without regard to Contest No. 12972.

3. To adjudge that the decision of the Commissioner in Contest No. 12972 dated December 23, 1931, and the orders, judgments or cancellations entered by defendant or his predecessors in said Contest are erroneous, invalid, and of no force or effect on the mining claims involved herein and now owned by the plaintiffs, and that the decision of the Land Office Manager (Exhibit "A") dated February 16, 1962, relative to M.E. C-028751 and the decision of the Solicitor of the Department of Interior (Exhibit "B") dated April 17, 1964, are erroneous, invalid and of no force or effect on the said mining claims involved herein and now owned by the plaintiffs.

4. For such other different and further relief as to the Court may seem reasonable, just and proper in the premises.

Schmidt & Van Cise

By Richard M. Schmidt, Jr.
Denver, Colorado 80202

Addresses of Plaintiffs:

Barnette T. Napier
135 Loralyn Drive
Arcadia, California

Grace A. Savage
9306 East Gallatin
Schoolhouse Road
Downey, California

Joan L. Savage and John W. Savage
Grand Valley, Colorado

[9]

Maude B. Farnum, St. Clair Napier Catlin,
William H. Farnum, Jr., John R. Farnum,
and Neil S. Mincer,
All of Glenwood Springs, Colorado

Filed July 15, 1964

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[66]

ANSWER

Defendant, Stewart L. Udall, Secretary of the Interior, by his attorneys, Lawrence M. Henry, United States Attorney, and Assistant United States Attorney, answers the complaint as follows:

First Defense

The complaint fails to state a claim upon which relief can be granted.

Second Defense

The United States, a sovereign not amenable to suit, is an indispensable party.

Third Defense

I. Defendant admits the allegations in paragraphs 1 and 2.

II. Defendant is without information sufficient to form a belief with respect to the truth or falsity of the allegations in the next to last sentence of paragraph 3. The remaining allegations in paragraph 3 and all of the allegations in paragraph 4 are conclusions of law which require no answer.

III. The allegations in paragraph 5 are denied.

[67] IV. Defendant is without information sufficient to form a belief with respect to the truth or falsity of the allegations in paragraph 6. Defendant denies that title has ever been quieted as against the United States.

V. Defendant admits the allegations in the first sentence of paragraph 7 and denies the allegations in the second sentence of that paragraph.

VI. With respect to the allegations in paragraphs 8 and 9, defendant admits that Contest No. 12972 was instituted in 1931 against the mining claims described in paragraph 7 of the complaint, admits that it was charged in that contest that annual assessment work in the amount of $100 had not been performed, admits that the contest was initiated in accordance with authorized procedure, admits that the then owners of the mining

claims were served and filed answers and admits that on December 23, 1931, the Commissioner of the General Land Office declared those claims null and void for failure to perform annual assessment work. Defendant denies the allegations in paragraphs 8 and 9 not herein specifically admitted.

VII. With respect to the allegations in paragraphs 10 and 11, defendant says that the decisions of the Supreme Court therein referred to speak for themselves.

VIII. Defendant denies the allegations in paragraph 12.

IX. Defendant admits the allegations in the first sentence of paragraph 13 and denies the allegations in the second sentence of that paragraph.

[68] X. Defendant denies the allegations in paragraph 14.

XI. Defendant admits that Exhibit "A", referred to in paragraph 15, is a true copy of a decision of the Manager of the Colorado Land Office, dated February 16, 1962, rejecting plaintiffs' patent application. Defendant denies the remaining allegations in paragraph 15.

XII. With respect to the allegations in paragraph 16, defendant says that the departmental decision of April 17, 1964, denying plaintiffs' patent application, speaks for itself. That decision declaring the claims null and void was at no time thereafter recalled or vacated by the Department of the Interior.

XIII. Defendant denies the allegations in paragraphs 17, 18 and 19.

XIV. With respect to the allegations in paragraph 20, defendant admits that patents covering some oil shale claims which had been declared void for failure to do assessment work may have been issued between 1935 and 1960. Defendant is without information sufficient to form a belief with respect to the truth or falsity of the remaining allegations in paragraph 20 not herein specifically admitted.

XV. Defendant denies the allegations in paragraph 21.

XVI. Defendant is without information sufficient to form a belief with respect to the truth or falsity of the

allegations in the first sentence of paragraph 22. Defendant denies the allegations in the second sentence of that paragraph.

XVII. Defendant denies the allegations in paragraphs 23 and 24.

[69] XVIII. Defendant admits the allegations in paragraph 25 as far as they relate to the application for a patent filed by the plaintiffs.

Fourth Defense

The oil shale placer mining claims, with respect to which plaintiffs filed a patent application on June 1, 1959, were originally located in 1920 or earlier years. These claims were held null and void by the Commissioner of the General Land Office in a decision dated December 23, 1931. No appeal was taken to the Secretary. Consequently, plaintiffs' predecessors in interest failed to exhaust their administrative remedies.

No action was taken by plaintiffs or their predecessors in interest to challenge the decision of December 23, 1931, and the application for a patent covering these null and void claims was filed more than forty years after filing of the claims and twenty-eight years after they had been declared invalid.

Wherefore, defendant demands that the complaint be dismissed.

Lawrence M. Henry
United States Attorney

James P. McGruder
Assistant United States Attorney

Filed September 11, 1964

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[97]

DEFENDANT'S STATEMENT

Pursuant to the Court's request, made at the conference on June 4, 1965, the following is defendant's statement of the preliminary issues:

1. Whether the Department of the Interior had subject-matter jurisdiction to render the cancellation decisions in Contests No. 12972 (Napier), No. 12029 (Umpleby) and Nos. 11,757, 11,729 and 11,761 (The Oil Shale Corporation).

2. Whether the defendant is required to declare said conte st decisions invalid by reason of the issuance of patents by his predecessor for some claims similarly situated or by reason of statements by some predecessor officials within the Department of Interior that similar decisions were without effect and void.

3. Whether said contest decisions were correct on the merits notwithstanding the decisions in Wilbur v. Krusnic, 280 U.S. 306, and Ickes v. Virginia-Colorado Development Corp., 295 U.S. 639.

[98] 4. Whether in the Umpleby case the plaintiffs are barred by laches for failure to seek judicial review of the original contest decision at the time that decision was rendered.

5. Whether in the Napier case the plaintiffs are barred by failure of the original claimants to exhaust their administrative remedies in the original contest.

6. Whether the Oil Shale Corporation action is barred by failure of (a) the original ownders of the claim to exhaust their administrative remedies in the original contest; (b) the failure of plaintiffs in this action to first exhaust administrative remedies by applying for a patent or otherwise seeking administrative review by the defendant of the earlier decisions of his predecessor.

7. Whether the plaintiffs have any interest in the claim; and if so, whether any relief can be obtained going beyond their interest.

8. Whether the Court is limited to a review in the Napier and Umpleby actions of the 1964 determination

by the defendant that the claims are invalid by reason of said contest decisions, and to a review in The Oil Shale Corporation action of the determination in the contest decisions that the claims were invalid. In other words, defendant contends tht this Court could not, in any event, direct the issuance of patents and in so doing pass upon the validity of the claims on grounds that have not as yet been considered by the Interior Department.

9. Whether these cases can be tried de novo or whether judicial review must be limited to the administrative record before the Department of the Interior.

10. Whether the United States is an indispensable party in all proceedings.

Respectfully submitted,

Lawrence M. Henry
United States Attorney for the District of Colorado

By David I. Shedroff
Assistant United States Attorney

Thomas L. McKevitt
Attorney, Department of Justice
Washington, D. C.
Attorneys for Defendant.

Filed June 16, 1965

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* * * *

[256]

JUDGMENT

This action was tried to the Court and the Court on December 21, 1966, filed a memorandum opinion and order.

It Is Ordered, Adjudged, And Decreed:

1. The decision by Solicitor of the Department of Interior on April 17, 1964, in Union Oil Company of Cali-

fornia, et al., 71 I.D. 169 (1964), as modified by Supplemental decision dated December 13, 1965, A-29560 (Supp B), is reversed and is void and of no effect whatever as to the unpatented mining claims involved in this case which are located in Garfield County, Colorado, described as the Southeast,Northeast and Northwest mining claims.

2. The action by the Department of Interior, in a contest proceeding, Contest No. 12972, initiated by the Department in 1931, in which the above were declared invalid for failure to perform annual assessment work is void and of no effect whatever.

3. That Mineral Application Colorado 028751 for the patenting of the mining claims listed in paragraph 1 of this judgment, and the Southwest claim, is reinstated and remanded for action by Defendant in accordance with the views expressed by this Court in Opinion and Order dated December 21, 1966.

Dated this 1st day of March, 1967.

By The Court:

William E. Doyle
United States District Judge

Lawrence M. Henry
United States Attorney

By David I. Shedroff
Assistant United States Attorney
Attorneys for Defendant

Approved as to Form:

Richard L. Eason
Attorney for Plaintiffs

Filed March 1, 1967

[257]

Notice of Appeal

Notice Is Hereby Given that the above-named defendant by its attorneys, Lawrence M. Henry, United States Attorney for the District of Colorado, and Richard T. Spriggs, Assistant United States Attorney for the District of Colorado, hereby appeals to the United States Court of Appeals for the Tenth Circuit from the final judgment entered herein by the United States District Court for the District of Colorado on the 1st day of March, 1967.

Dated April 26, 1967.

Lawrence M. Henry
United States Attorney for the
Distritc of Colorado

By Richard T. Spriggs
Assistant United States Attorney
for the District of Colorado
Denver, Colorado 80202

Filed April 26, 1967

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Clerk's Certificate

I, G. Walter Bowman, Clerk of the United States District Court for the District of Colorado, do hereby certify the foregoing pages numbered one (1) to two hundred sixty (260) inclusive, are the original pleadings, Orders, papers, and exhibits, in a case lately pending in this Court, wherein, Barnette T. Napier, Grace A. Savage, Joan L. Savage, Maude B. Farnum, St. Clair Napier Catlin, William H. Farnum, Jr., John R. Farnum, John W. Savage, and Neil S. Mincer, were plaintiffs, and

Stewart L. Udall, Secretary of the Interior was the defendant, in Civil Action 8691.

In Testimony to the above, I do hereunto sign my name and affix the seal of said Court at the City and County of Denver, in said District, this 3rd day of October, 1967.

(Seal) G. Walter Bowman, Clerk

Filed May 16, 1968

Case No. 9584

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Pleas and proceedings before the Honorable William E. Doyle, Judge of the United States District Court for the District of Colorado, presiding in the following entitled cause:

PENELOPE CHASE BROWN individually and as trustee, and THE OIL SHALE CORPORATION, PLAINTIFFS

vs.

STEWART L. UDALL, Secretary of the Interior, DEFENDANT

No. 9202, Civil

[1]

COMPLAINT

Plaintiffs Penelope Chase Brown, et al., by their attorneys, for their complaint, allege:

1. Plaintiff Penelope Chase Brown is a citizen of the State of Colorado. Plaintiff The Oil Shale Corporation is a corporation duly incorporated under and existing by virtue of the laws of the State of Nevada and has its principal office and place of business at 680 Fifth Avenue, New York City, New York.

2. The defendant, Stewart L. Udall, here sued in his official capacity, is the duly qualified and acting Secretary of the Interior of the United States, having his official place of business at the seat of the government in Washington, D. C. Under and by virtue of 9 Stat. 395; 5 U.S.C. § 485; 43 U.S.C. §§ 2, 1201; 1950 Reorganization Plan No. 3, 15 F.R. 3174, 64 Stat. 1262, the defendant is charged with the control, direction and supervision of all officers and employees of the Department of the Interior, the administration and enforcement of all laws relating to the public lands and to mining claims thereon, and the issuance of rules and regulations relating thereto.

[2] 3. This action arises under the Constitution, more particularly the Fifth Amendment, and the laws of the United States, including 30 U.S.C. §§ 22-38, pursuant to which plaintiffs claim vested rights in and to the Oyler Oil Shale Placer Mining Claims Nos. 1-4 ("the Oyler claims"). It involves the rights of the plaintiffs to enjoy and possess the Oyler claims and the duty of the defendant owed to the plaintiffs to administer the laws under which plaintiffs claim said rights upon a proper construction of those laws. The matter in controversy, exclusive of interest and costs, exceeds in value the sum of $10,000. The jurisdiction of this Court is invoked under 28 U.S.C. §§ 1331, 1361, 1391 and 2201; and under the Administrative Procedure Act (5 U.S.C. §§ 1001-1011).

4. This action is brought (a) to obtain judicial relief with respect to decisions of the Department of the Interior (hereafter called "Interior") in Contest 12039, rendered in 1931 and 1932, purporting to invalidate the Oyler claims for failure to perform annual assessment work; (b) to obtain judicial relief with respect to the administrative decision of the defendant announced in Union Oil Company of California, et al., 71 I.D. 169 (1964), rejecting an application for patent to the Oyler claims on the ground of the decision in Contest 12039; and (c) to establish in full plaintiffs' rights to a patent to the Oyler claims and to obtain an order of this Court directing the defendant to issue such patent.

5. The Oyler claims are situated in Garfield County, Colorado, approximately six miles northeast of Grand Valley, and encompass portions of Sections 10, 11 and 12, Township 6 South, Range 95 West, 6th P.M., as follows:

Beginning at corner no. 1, Oyler No. 1, whence the common corner of secs. 10, 11, 14, and 15, T. 6 S., [3] R. 95W., 6th P.M., bears S. 15° 22′ 20″ W. 2032.95 feet; thence N. 89° 54′ W. 2629.6 feet to corner no. 2, Oyler No. 1; thence N. 0° 40′ E. 2640.0 feet to corner no. 3, Oyler No. 1; thence S. 89° 54′ E. 2598.9 feet to corner no. 4, Oyler No. 1; thence E. 6571.4 feet to corner no. 3, Oyler No. 4; thence S. 2640.0 feet to corner no. 4, Oyler No. 4; thence W. 3942.2 feet to corner no. 5, Oyler No. 2; thence S. 1320.0 feet to corner no. 6, Oyler No. 2; thence W. 2629.2 feet to corner no. 1, Oyler No. 2; thence N. 1320.0 feet to the point of beginning.

Plaintiff Penelope Chase Brown holds legal and full record title to the Oyler claims and has a substantial, if not the entire, beneficial interest therein; the remaining beneficial interest, if any, is held by the beneficiaries of a trust of which plaintiff Penelope Chase Brown is trustee. Plaintiff The Oil Shale Corporation has a lease and option to purchase the Oyler claims.

6. The Oyler claims were located on September 25, 1916, in full compliance with the applicable mining laws. The locations were perfected by discoveries of valuable deposits of oil shale, and location certificates for each of the claims were duly recorded. The locators thereby obtained fully vested mining rights of possession by virtue of the Congressional grants embodied in the mining statutes.

7. The Oyler claims were acquired in 1920 by Index Shale Oil Company ("Index"), a Colorado corporation organized by Harry L. Brown, the late husband of plaintiff Penelope Chase Brown, and his associates, Brown having theretofore developed a process for treating oil shale. Index, for which Brown acted as general manager, acquired an additional group of claims known as the Mt. Blaine claims, and from 1920 to 1938 Index constructed a plant and other buildings, built roads, constructed a

mine and commenced mining, installed an aerial tram to transport oil shale to the plant, and engaged in laboratory and processing work and other similar activities. In the course of this period over $200,000 was invested in the claims and in the operations of Index, including substantially all of the personal financial [4] resources of the Browns. The operations of Index were adversely affected by the Depression and in 1938 Index was obliged to sell part of its plant and equipment to satisfy financial obligations and ceased operations. In 1948 title to the Oyler claims and the Mt. Blaine claims was conveyed to the Browns in satisfaction of the substantial sums which they had advanced to Index.

8. Thereafter the Browns continued their efforts to develop the Oyler and Mt. Blaine claims in association with others under an agreement entered into in 1952. These efforts culminated in a 1955 agreement between the Browns and their associates and Pacific Oil Company ("Pacific"), under the terms of which the claims were conveyed to Pacific and Pacific undertook to apply for patents on the claims and to pay substantial sums to the Browns and their associates upon the issuance of patents. Pursuant to the 1955 agreement Pacific became the owner of the Oyler claims and in September 1955 filed an application for patent on the Oyler claims. Pacific thereafter filed an application for patent on the Mt. Blaine claims, and patent thereon issued in 1959.

9. Interior has on several occasions investigated the Oyler claims with a view to determining whether the claims were valid or subject to cancellation. The first such investigation was made during or prior to 1918 and resulted in the conclusion by Interior that the claims had been properly located and perfected by discoveries of valuable minerals and were fully valid claims. In the 1920's Interior conducted a second thorough examination of the Oyler claims and again concluded that the Oyler claims were in all respects valid, save for a technical question as to the effect of relocation certificates and the assessment work charge raised in Contest 12039 discussed below in paragraphs 11-14.

[5] 10. Another thorough investigation of the Oyler claims was made in the course of Interior's processing, which has been duly completed, of the patent application filed by Pacific in 1955. As a result of that investigation, Interior once again concluded that the Oyler claims were in all respects valid. The processing and review of the application established that Pacific was entitled as a matter of right to issuance of a patent. That patent was never issued, however, for in February 1962 the application for patent to the Oyler claims was rejected, without prior notice to Pacific, in a decision issued by the Manager of the Colorado State Office, on the ground that decisions in Contest 12039 had become effective, with the passage of time, to nullify the claims.

11. Contest 12039 brought against the Oyler claims was one of hundreds of quite similar administrative proceedings instituted by Interior during the latter 1920's and early 1930's in the course of a campaign conducted by Interior to cancel substantially all the then unpatented oil shale mining claims. In these contests Interior asserted that nonperformance of annual assessment work authorized it to annul oil shale claims.

12. Contest 12039 was commenced on or about June 28, 1929, but before any hearing had been held in Contest 12039 the Supreme Court ruled in Wilbur v. Krushnic, 280 U.S. 306 (1930), that Interior lacked authority under the mining laws to cancel mining claims for nonperformance of assessment work and that the Mineral Leasing Act had not conferred such authority. Thereafter, on or about July 22, 1931, an amended complaint was filed in Contest 12039 alleging not only nonperformance of assessment work but also nonresumption of the work. In a decision dated December 2, 1931 the Commissioner of the General Land Office [6] purported to declare the Oyler claims null and void for failure to perform assessment work, although recognizing that the Oyler claims were otherwise valid. On appeal, Assistant Secretary Edwards, on March 10, 1932, affirmed the Commissioner's decision in Contest 12039.

13. Thereafter, in Ickes v. Virginia-Colorado Development Corp., 295 U.S. 639 (1935), the Supreme Court

held that a failure to perform assessment work, whether or not performance of the work had been resumed, could not serve as a basis for invalidating mining claims. It held that Interior's challenges to oil shale claims for failure to perfor massessment work, its institution and conduct of contests based on failure to perform assessment work, and its decisions, such as those in Contest 12039, purporting to declare claims null and void for failure to perform assessment work, its institution and authority conferred by law upon the defendant's predecessors in office.

14. Following the decision in Ickes v. Virginia-Colorado Development Corp., supra, defendant's predecessor in office and his authorized subordinates decided and declared that all prior decisions declaring mining claims null nad void for failure to perform assessment work were themselves null and void and of no effect upon the validity of mining claims, overruled all decisions holding that Interior had jurisdiction to challenge mining claims for nonperformance of assessment work and expressly recalled and vacated the departmental instructions authorizing the renewal or continuance of assessment work contests following the Krushnic decision in 1930. Interior expressly recognized and acknowledged that the decisions in Contest 12039 adverse to the Oyler claims were null and void and without effect on the validity of the Oyler claims.

[7] 15. The defendant and his predecessors in office have at all times lacked authority to inquire or decide whether assessment work has been performed. Consequently, the decisions in Contest 12039 in 1931 and 1932 purporting to cancel the Oyler claims for failure to perform assessment work were and are null and void and of no force or effect.

16. During the period from 1935 through 1962, the defendant, his predecessors in office, and officials and employees of Interior repeatedly and publicly affirmed that the decisions in the assessment work contest proceedings, including Contest 12039, were void and of no effect and did not operate to invalidate or otherwise adversely affect the interests of the plaintiffs, their predecessors in interest or others similarly situated.

17. During the period from 1935 through 1962, the defendant and his predecessors in office issued patents covering at least 74,000 acres of oil shale claims, including many of the Mt. Blaine claims, which had purportedly been declared null and void in assessment work proceedings such as those here involved and which were in all material respects of fact and law the same as the Oyler claims, with full knowledge that such contest proceedings had resulted in decisions purportedly adverse to the claims, and in recognition of the invalidity and nullity of the prior contest proceedings and of the fact that the decisions therein had been vacated. Interior's consistent practice of issuing patents for oil shale claims which had purportedly been invalidated by assessment work proceedings was widely known throughout the area in which the claims were located and among those primarily interested in oil shale.

[8] 18. Interior has, by reason of the facts set forth above in paragraphs 14, 16 and 17, duly adopted a rule of law, which cannot be retroactively altered to the detriment of plaintiffs, that the assessment work contests, including Contest 12039, had no effect on the validity of mining claims.

19. Interior's consistent policy from 1935 to 1962, publicly and repeatedly announced, of treating the decisions in the assessment work contests, including Contest 12039, as nullities of no force and effect was justifiably relied on by the plaintiffs or their predecessor in interest in acquiring or improving or perfecting their rights to the Oyler claims.

20. Pacific duly perfected an administrative appeal from the Manager's decision of February 1962, rejecting the Oyler patent application, and on appeal duly objected both to the substance of the Manager's decision and to the manner in which it had been rendered—without notice of charges or an opportunity to be heard, and in violation of Interior's own regulations, the Administrative Procedure Act, and the Constitution. Two full years later, on April 17, 1964, the Solicitor, who had already participated in the proceedings in a prosecutorial man-

ner, sat in judgment thereon and affirmed the Manager's rejection of the Oyler patent application.

21. Thereafter, pursuant to the provisions of the 1955 agreement referred to in paragraph 8, above, Pacific transferred responsibility for further efforts to patent the Oyler claims to plaintiff Penelope Chase Brown and reconveyed the Oyler claims to her. Pacific no longer has any interest in this controversy, or the patent application, and the plaintiffs have succeeded to all of Pacific's interests therein.

22. Interior's resort to the assessment work decision [9] in Contest 12039 as the ground for rejection of the patent application for the Oyler claims, which was otherwise complete and regular in all respects, was the result of the adoption by Interior by early 1962 of a policy of opposing all oil shale patent applications, however meritorious. The assessment work contest decisions were regarded by Interior as a suitably sweeping device for the accomplishment of this policy inasmuch as such decisions had been rendered at one time or another against the great majority of all oil shale claims. Interior's decision to interpose the null and void assessment work decisions as an obstacle in 1962 to the patenting of oil shale claims, including the Oyler claims, was a deliberate decision, reflecting consultations and communications among numerous branches and officials of Interior including the Office of the Solicitor, which concurred in, approved and authorized this decision.

23. In furtherance of its policy of opposing oil shale claims and interposing obstacles to oil shale claimants seeking to vindicate their rights, Interior denied to representatives of Pacific permission to examine the files concerning Contest 12039 until pertinent documents therein had been removed. In furtherance of the same policy, Interior has engaged in arbitrary, unreasonable and dilatory procedural practices within the Department in order to discourage oil shale claimants and has attacked two pending oil shale patent applications which could not be subjected to the assessment work res judicata technique (because the claims had never been in-

volved in assessment work contests) upon novel and erroneous grounds as to the lack and "loss" of discovery.

24. The Oyler claims are fully valid mining claims. The patent application based thereon is in all respects regular and complete, and a proper showing has been made of the right [10] to a United States land patent for the lands embraced by the Oyler claims. Neither the decisions in Contest 12039 nor Interior's policy of opposing all oil shale patenting provide a lawful ground for interior's refusal to issue a patent to the Oyler claims. Interior has no other ground for its refusal. There has been no acquiescence by any private party in the decisions in Contest 12039 adverse to the Oyler claims, and no rights of third parties have intervened; the purported findings to the contrary in the Manager's decision of February 1962 are unsupported by anything in the record before the Manager.

25. The defendant is wrongfully withholding patent for the lands embraced by the Oyler claims, and has unreasonably delayed the favorable administrative action on the application therefor to which plaintiffs are entitled. Defendant has a duty promptly to issue the requested patent.

26. Necessary and appropriate administrative processing of the patent application has been completed. Plaintiffs have exhausted all their remedies within the Department of the Interior with respect to the patent application and with respect to the adverse decisions in Contest 12039.

Wherefore, the plaintiffs pray the Court:

1. To reverse the decision of the Commissioner of the General Land Office in Contest 12039 dated December 2, 1931, and to reverse the decision of the defendant's predecessor in office in Contest 12039 dated March 10, 1932, and to require the defendant to recall, vacate, and expunge from the records of the Department of the Interior any decisions, orders, judgments or cancellations entered by the defendant or his predecessors in office or their subordinates in Contest 12039 that were or purported to be adverse to the said Oyler claims.

[11] 2. To reverse the Department of the Interior ruling of April 17, 1964, in Appellate Proceeding A-29560, Union Oil Company of California, et al., 71 I.D. 169, insofar as it rejected the Oyler patent application.

3. To declare that the Oyler claims are fully valid claims, that the Oyler patent application is in all respects complete and regular, and that the defendant is under a duty to issue patent therefor.

4. To issue its mandatory order compelling the defendant promptly to issue patent for the Oyler claims.

5. To issue such other restraining orders, temporary injunctions, and permanent injunctions as may be required to protect the statutory and constitutional rights of plaintiffs, preserve the jurisdiction of the Court, and assure the due and fair administration of justice.

6. To grant such other and further relief as the Court deems reasonable, just and proper.

Dated: Denver, Colorado
June 14, 1965

Tweedy, Mosley, Aley & Young

By John B. Tweedy
Denver, Colorado

Clearly, Gottlieb, Steen & Hamilton
New York, New York
Of Counsel

Filed June 14, 1965

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[16]

ANSWER

Stewart L. Udall, Secretary of the Interior, by his undersigned attorneys, answers the complaint filed in this cause as follows:

First Defense

The complaint fails to state a claim upon which relief can be granted.

Second Defense

The United States, a sovereign not amenable to suit, is an indispensable party.

Third Defense

I. Admits the allegations of paragraphs 1 and 2 of the complaint.

II. Defendant is without knowledge or sufficient information to form a belief as to the truth of the allegation of paragraph 3 relating to the amount in controversy and therefore denies same. The remaining allegations of paragraph 3 and all of the allegations of paragraph 4 are conclusions of law and require no answer.

III. Defendant is without knowledge or sufficient information to form a belief as to the truth of the allegations of paragraph 5 and therefore denies same.

By way of further explanation of the prior sentence, defendant states that the legal description set forth in paragraph 5 is the legal description contained in Mineral Survey 20819 which is a part of the record in the proceeding for patent application. (As a matter of convenience all answers in the remainder of this defense relating to "the Oyler claims" will assume that the same have reference to the legal description as contained in paragraph 5 of the complaint.)

[17] IV. Admits that location certificates filed in Garfield County, Colorado, indicate that the claims were originally located on September 25, 1916, but defendant is without sufficient knowledge or information to form a belief as to the truth of said allegation of paragraph 6 of the complaint, and therefore denies same. Denies all other allegations of paragraph 6.

V. Defendant is without knowledge or sufficient information to form a belief as to the truth of the allegations of paragraph 7 and therefore denies same.

VI. Admits that Pacific Oil Company filed an application for patent for the Oyler Nos. 1-4 claims in 1955, and that a patent to the Mt. Blaine Nos. 1, 3, 4, and 5 claims was issued to the Pacific Oil Company in 1959. Defendant is without knowledge or sufficient information to form a belief as to the truth of the remaining allegations of paragraph 8 and therefore denies same.

VII. Answering paragraph 9 of the complaint, admits that the Oyler Nos. 1-4 claims have been investigated for partial validity on several occasions by employees of the Department of the Interior but denies that the Department has concluded that they were fully valid claims.

VIII. Answering paragraph 10 of the complaint, admits that the claims were examined as a consequence of a patent application filed by Pacific Oil Company, and that the patent application was rejected by a decision dated February 16, 1962, issued by the Manager, Denver Land Office, on the ground that the claims had been declared null and void as a result of contest number 12039, and that this declaration of invalidity is now res judicata. Denies the remaining allegations of this paragraph.

IX. Answering paragraph 11 of the complaint, admits that the Department of the Interior initiated adverse proceedings against unpatented oil shale claims in the latter 1920s and early 1930s challenging the validity of such claims whenever field examinations disclosed a failure to perform annual assessment work for such claims before the Supreme Court decision Wilbur v. Krushnic, 280 U.S. 306 (1930), was issued, and thereafter and until the issuance of the decision of Ickes v. Virginia-Colorado Development Corp., 295 U.S. 639 (1935), whenever field examinations disclosed a failure to perform annual assessment work for such claims and the claimants had not then resumed such work. Denies that such contests were a part of a campaign conducted by the Department of the Interior to cancel substantially all the then unpatented oil shale mining claims.

[18] X. Answering paragraph 12 of the complaint, denies that the Supreme Court ruled in Wilbur v. Krushnic, supra, that the Department of Interior lacked authority under the mining laws to cancel mining claims

for nonperformance of assessment work and that the Mineral Leasing Act of February 25, 1920, had not conferred such authority. Technically, the Supreme Court held in the Krushnic case only that the Government could not challenge claims for failure to perform annual assessment work where such work had been resumed by the locator at the time the claims were challenged by the Government. Denies that the December 2, 1931, decision of the Commissioner, General Land Office, recognizes that the Oyler claims were valid except for the failure to perform assessment work. The Commissioner held that portions of the claims were null and void because the lands were made a part of a Naval Oil Shale Reserve before the mining claimants amended their location notices to include them in the claims. All of the above are matters of law. Admits the remaining allegations in said paragraph 12 of the complaint.

Further answering said paragraph 12, states that the decisions speak for themselves and that the same do not relate to "the Oyler claims" as described in paragraph 5 of the complaint, all as is more fully set forth in the Fourth Defense to this action, infra.

XI. Paragraphs 13 and 14 of the complaint consist of conclusions of law, and therefore require no answer; the decisions referred to speak for themselves. The legal significance of these decisions are stated in the proceeding referred to in paragraph 4(b) of the complaint. To the extent that paragraph 14 may be construed as an allegation of fact, the same is denied.

XII. Paragraph 15 consists of conclusions of law and therefore requires no answer.

XIII. Answering paragraph 16, of the complaint, denies that the Department ever rendered any decision holding that the decisions issued as a result of contest number 12039 were null and void and had no effect on the Oyler Nos. 1 to 4 claims. General statements were made regarding the effect of the assessment work contests. Several letters and other documents containing such statements were referred to in the Union Oil Company of California, et. al. decision, and are included in that decision as appendices. Denies that the Secretary

of the Interior, his predecessors and other officials and employees of the Department publicly and repeatedly declared that the [19] decisions resulting from contest number 12039 were void and of no effect.

XIV. Answering paragraph 17 of the complaint, admits that certain oil shale claims, including the Mt. Blaine Nos. 1, 3, 4 and 5, were patented between 1935 and 1960, some of which had been declared null and void as a result of contests alleging a failure to perform annual assessment work. Denies that all such claims were patented with full knowledge of the previous conte st proceedings and in recognition of the invalidity and nullity of the contests and of the fact that the decisions had been vacated. Denies that any patents were issued after July 6, 1960. Defendant is without knowledge or sufficient information to form a belief as to the truth of the remaining allegations of paragraph 17 and therefore denies same.

XV. Paragraph 18 of the complaint consists of conclusions of law and therefore requires no answer.

XVI. Denies all portions of paragraph 19 which constitute facts; the remainder of said paragraph consists of conclusions of law which require no answer.

XVII. Admits that Pacific Oil Company perfected an appeal from the Manager's decision of February 1962 and that the Department affirmed the Manager's decision rejecting its patent application. Denies all other allegations of paragraph 20.

XVIII. Defendant is without knowledge or sufficient information to form a belief as to the truth of the allegations of paragraph 21 and therefore denies same.

XIX. Denies the allegations of paragraph 22.

XX. Admits that at the early stages of the patent proceeding there may have been a denial of the "confidential" portions of the contest file; however, in any event the same were later made available. Denies all other allegations of paragraph 23.

XXI. To the extent that portions of paragraph 24 constitute statements of fact the same are denied; the remainder of said paragraph consists of conclusions of law which require no answer.

XXII. Paragraph 25 consists of conclusions of law, and therefore requires no answer.

[20] XXIII. Answering paragraph 26 of the complaint, admits that the plaintiffs have exhausted all their administrative remedies within the Department of the Interior with respect to the adverse decisions based on contest number 12039, including the decisions holding that the decisions resulting from that contest are res judicata. Denies that all the necessary and appropriate administrative processing of the patent application has been completed.

XXV. Further answering, defendant states that the remedy, if any is available to plaintiffs, is solely to determine the effect of the prior proceedings, and if incorrect, to remand the same to the defendant for further proceedings.

Fourth Defense

I. The original claim for Oyler No. 4 as shown on location certificate filed October 3, 1916, is for 160 acres in the form of a square stated to be NW¼NW¼ of unsurveyed Section 12, Township 6 South, Range 95 West.

II. That on December 6, 1916, Naval Oil Shale Reserve No. 1 was created, which reserve included what was then considered to be said unsurveyed Section 12, and what is in fact Sections 11 and 12, Township 6 South, Range 95 West.

III. That on November 15, 1918, an amended certificate was filed omitting the NW¼NW¼ of said unsurveyed Section 12, and substituting the NW¼SW¼ of said unsurveyed section therefor; that said omission and substitution constituted an abandonment of the NW¼ of the claim as originally staked and located; that by decisions dated December 2, 1931 and March 10, 1932, the Department of Interior held said November 1918 amendment ineffective, which decisions are now res judicata (aside from the issue of work); and that the abandoned NW¼ of oroginal Oyler Claim No. 4 could not thereafter be reinstated.

IV. That as a result of the materials contained in this defense, under no circumstances do the plaintiffs

have any rights to or interest in the NW¼ of Oyler No. 4 as originally located.

Fifth Defense

I. The original decision of the Commissioner, General Land Office of December 2, 1931, was affirmed by decision dated March 10, 1932. Insofar as this action purports, in part, to seek review of these decisions, the same is not timely taken and plaintiffs are barred by estoppel and laches.

II. That the decisions described in paragraph I of this defense are res judicata, and therefore the 1964 decision purportedly being appealed was correctly decided.

Lawrence M. Henry
United States Attorney for the
District of Colorado

By David I. Shedroff
Assistant United States Attorney
Attorneys for Defendant

Filed August 23, 1965

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[28]

DEFENDANT'S PRE-TRIAL STATEMENT

I. Statement of Facts

This suit involves oil shale claims located by undisclosed individuals in September, 1916. On March 10, 1932, the claims were declared null and void by the Department of the Interior on grounds of failure to perform assessment work. This decision was never vacated or reversed. In 1962 a patent application was rejected by the Manager on the grounds that the claims had previously been held invalid. This decision was appealed

and affirmed by the Secretary of the Interior on April 17, 1964. In their recent patent application, the plaintiffs contended that the Supreme Court had concluded in Ickes v. Virginia-Colorado Development Corp., 295 U.S. 639, that failure to perform assessment work could not serve as a basis for invalidating mining claims. The Secretary held that this decision did not affect claims which had been declared invalid on the same ground but which were never vacated or annulled and that the invalidity of the claims was established as a matter of res judicata. This suit followed seeking judicial review.

II. Witnesses

Because this is a suit to review the decision of an administrative officer, it is defendant's contention that the suit must be tried on the basis of the administrative record. Accordingly, it is not contemplated that any witnesses will be called on behalf of defendant. However, should the plaintiffs be permitted to submit de novo testimony, the defendant may ask authority to call witnesses to meet such testimony.

III. Documentary Evidence

The burden of submitting the administrative record is on the plaintiff. However, the defendant will be prepared to submit the following:

[29] 1. A copy of decision of March 10, 1932, referenced in Statement of Facts.

2. The original or a copy of the patent application.

3. A copy of the Manager's decision refusing the patent.

4. A copy of the appeal papers filed in connection with the appeal to the Bureau of Land Management.

5. A copy of the Secretary's decision dated April 17, 1964. (71 I.D. 169).

The comments heretofore made with respect to the presentation of witnesses on behalf of the defendant also apply to the presentation of further documentary evidence.

IV. Contentions

Defendant's Statement ofContested Issues.

The defendant does not believe that there are any relevant factual issues. This case involves questions of law; however, the plaintiffs, in their complaint, contend that, after 1935, the decision declaring the claims void was cancelled. This is denied. Plaintiffs also contend that after the decision in the Krushnic and Virginia-Colorado Development Corp. cases a number of patents were issued to other parties whose claims had been previously rejected for failure to do assessment work. This is conceded although the number of patents in this category is not known. Plaintiffs also contend that the Department of the Interior developed a policy of conceding that all earlier adjudications declaring claims invalid for failure to do assessment work are null and void. This is denied.

Defendant's Statement of Issues.

1. Whether the Department of the Interior had subject-matter jurisdiction to render the cancellation decision in Contest No. 12039.
2. Whether the defendant is required to declare said contest decision invalid by reason of the issuance of patents by his predecessor for some claims similarly situated or by reason of statements by some predecessor officials within the Department of Interior that similar decisions were without effect and void.
3. Whether said contest decision was correct on the merits notwithstanding the decisions in Wilbur v. Krushnic, 280 U.S. 306, and Ickes v. Virginia-Colorado Development Corp., 295 U.S. 639.

[30] 4. Whether in the instant case the plaintiffs are barred by laches for failure to seek judicial review of the original contest decision at the time that decision was rendered, and failure to seek extraordinary relief from the Secretary after the decision of the U. S. Supreme Court in Ickes, supra.

5. Whether the plaintiffs have any interest in the claim; and if so, whether any relief can be obtained going beyond their interest.

6. Whether the Court is limited to a review in this action of the 1964 determination by the defendant that the claims are invalid by reason of said contest decision.

7. Whether these cases can be tried de novo or whether judicial review must be limited to the administrative record before the Department of the Interior; and relief if any be limited to a determination whether the patent applications may be rejected on the res judicata doctrine, all other defenses to issuance of a patent, e.g., effect of amendment of claim, etc., being for the initial determination by the Secretary.

8. Whether the United States is an indispensable party in this proceeding.

9. Whether, even if some officials of the United States may have publicly announced or acted in a manner which indicated they believed all decisions declaring claims invalid for failure to do assessment work were null and void, such announcements or actions create a rule of property or constitute an estoppel against the United States. United States v. California, 332 U.S. 19, 39.

Respectfully submitted,

Lawrence M. Henry
United States Attorney for the
District of Colorado

By David I. Shedroff
Assistant United States Attorney
Attorneys for Defendant.

Filed October 19, 1965

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[31] Supplement to Defendant's Pre-Trial Statement

Pursuant to Court instructions, the following is a further exposition of Defendant's contention as to the scope of relief which may be granted in this action:

10. In the event this court should determine that the "assessment work" proceedings are invalid as a defense in this action, the same being the only matter determined by the Defendant in his decision, the review of which is the subject-matter of this litigation, the court must remand the cause to the Defendant for further proceedings, and this court is without authority to grant the portion of the prayer herein relating to the issuance of a patent. Federal Power Commission v. Idaho Power Co., 344 U. S. 17. Work, Secretary of the Interior v. Louisiana, 269 U. S. 250.

November 8, 1965.

Respectfully submitted,

Lawrence M. Henry
United States Attorney for the
District of Colorado.

By David I. Shedroff
Assistant United States Attorney.
Attorneys for Defendant.

Filed November 8, 1965

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JUDGMENT

This action came on for trial before the Court, Honorable William E. Doyle, District Judge, presiding, and the issues having been duly tried and a decision having been duly rendered,

It is Ordered and Adjudged:

1. That the decision of the Commissioner of the General Land Office in Contest 12039 dated December 2, 1931 and the decision of the Assistant Secretary of the

Interior dated March 10, 1932, affirming the aforesaid decision of the Commissioner of the General Land Office and any other decision in said contests purporting to declare the Oyler Placer Mining Claims Nos. 1-4 inclusive, null and void for failure to perform annual assessment work, were and are void, invalid and of no force or effect whatever upon the validity of the Oyler Claims or of any interest or interests in said claims or any of them insofar as those decisions relate to the failure to perform annual assessment work. Mineral Survey No. 20819 Colorado was made in connection with Mineral Application Colorado 012327 for patent to the aforesaid Oyler claims; on the basis of said survey, the claims may be described as comprising the following portions of Sections 10, 11 and 12, Township [194] 6 South, Range 95 West of the Sixth Principal Meridian, in Garfield County, Colorado:

Oyler No. 1

Oyler No. 1 Placer Mining Claim (hereinafter referred to as Oyler No. 1), as shown on the plat of Mineral Survey No. 20819 Colorado, certified by the Bureau of Land Management United States Department of Interior, under date of December 16, 1958 (hereinafter referred to as Mineral Survey No. 20819 Colorado), as a tract of land in Sections 10 and 11, Township Six (6) South, Range Ninety-five (95) West, Sixth P. M. beginning at corner number one (1) of said Oyler No. 1 which bears N. 15°22′20″E. a distance of 2032.95 feet from the Southwest corner of said Section 11; thence N. 89°54′W. a distance of 2629.6 feet to corner number two (2) of said Oyler No. 1; thence N. 0°40′E. a distance of 2640.0 feet to corner number three (3) of said Oyler No. 1; thence S. 89°54′E. a distance of 2598.9 feet to corner number four (4) of said Oyler No. 1; thence South a distance of 2640.0 feet to the point of beginning; which claim was originally described as the Northeast Quarter (NE¼) of Section Ten (10), Township Six (6) South, Range Ninety-five (95) West, Sixth P.M.

Oyler No. 2

Oyler No. 2 Placer Mining Claim (hereinafter referred to as Oyler No. 2), as shown in the plat of Mineral Survey No. 20819 Colorado as a tract of land in Section 11, Township Six (6) South, Range Ninety-five (95) West, Sixth P.M., beginning at a corner number one (1) of said Oyler No. 2 which bears N. 40°05′30″E. a distance of 836.87 feet from the Southwest corner of said Section 11; thence North a distance of 3960.0 feet to corner number two (2) of said Oyler No. 2 which is a point identical with corner number four (4) of Oyler No. 1; thence East a distance of 1309.2 feet to corner number three (3) of said Oyler No. 2 [which is marked by a galvanized pipe, with brass cap marked 3-Oyler 2, 2-Oyler 3]; thence South a distance of 2640 feet to corner number four (4) of said Oyler No. 2 which is a point which bears N.43°18′50″E. a distance of 2694.12 feet from the Southwest corner of said Section 11; thence East a distance of 1320.0 feet to corner number five (5) of said Oyler No. 2 which is a point identical with corner number three (3) Sur. No. 19942 Sheridan Placer No. 19; thence South a distance of 1320.0 feet to corner number six (6) of said Oyler No. 2 which is a point identical with [195] corner number Two (2) Sur. No. 19942 Sheridan Placer No. 18; thence West a distance of 2629.2 feet to the point of beginning; which Oyler No. 2 was originally described as the West Half of the Northwest Quarter (W½NW¼) and the North Half of the Southwest Quarter (N½SW¼) of Section Eleven (11), Township Six (6) South, Range Ninety-five (95) West, Sixth P.M.

Oyler No. 3

Oyler No. 3 Placer Mining Claim (hereinafter referred to as Oyler No. 3), as shown on the plat of Mineral Survey No. 20819 Colorado as a tract of land in Section 11, Township Six (6) South, Range Ninety-five (95) West of the Sixth P.M. beginning at corner number one (1) of said Oyler No. 3 which is a point identical with corner number four (4) of Oyler No. 2, which is a point which bears N.43°18′50″E. a distance of 2694.12

feet from the Southwest corner of said Section 11; thence North a distance of 2640.0 feet to corner number two (2) of said Oyler No. 3, which is a point identical with corner number three (3) of Oyler No. 2; thence East a distance of 2622.2 feet to corner number three (3) of said Oyler No. 3 [which is marked by a galvanized pipe with brass cap marked 3-Oyler 3, 2-Oyler 4]; thence South a distance of 2640.0 feet to corner number four (4) of said Oyler No. 3 which is a point which bears N.66°19′20″E. a distance of 4881.3 feet from the Southwest corner of said Section 11; thence West a distance of 2622.2 feet to the point of beginning; which Oyler No. 3 was originally described as the East Half of the Northwest Quarter (E½NW¼) and the West Half of the Northwest Quarter (W½NE¼) of Section Eleven (11), Township Six (6) South, Range Ninety-five (95) West, Sixth P.M.

Oyler No. 4

Oyler No. 4 Placer Mining Claim (hereinafter referred to as Oyler No. 4), as shown on the plat of Mineral Survey No. 20819 Colorado as a tract of land in Sections 11 and 12, Township Six (6) South, Range Ninety-five (95) West, Sixth P.M., beginning at corner number one (1) of said Oyler No. 4 which is the same as corner number four (4) of Oyler No. 3 which is a point which bears N.66°19′20″E. a distance of 4881.3 feet from the Southwest corner of said Section 11; thence North a distance of 2640.0 [196] feet [along the East boundary of Oyler No. 3] to corner number two (2) of said Oyler No. 4 which is a point identical with corner number three (3) of Oyler No. 3; thence East a distance of 2640.0 feet to corner number three (3) of said Oyler No. 4 [which is marked by a galvanized pipe with brass cap marked 3-Oyler 4]; thence South a distance of 2640.0 feet to corner number four (4) of said Oyler No. 4 [which is marked by a galvanized pipe with a brass cap marked 4-Oyler 4]; thence West a distance of 2640.0 feet along a line parallel to the North boundary of said Oyler No. 4 to the point of beginning; which Oyler No. 4 was originally described as the East Half of the Northeast

Quarter (E½NE¼) of Section Eleven (11) and the West Half of the Northwest Quarter (W½NW¼) of Section Twelve (12), Township Six (6) South, Range Ninety-five (95) West, Sixth P. M.

2. That the defendant, his successors and his or their agents and employees are forever enjoined and restrained from asserting against the plaintiffs or their successors in interest the validity of the aforesaid decisions insofar as they relate to the failure to perform annual assessment work.

3. That the decision dated February 16, 1962, of the Land Office Manager, Colorado State Office, Bureau of Land Management, Department of Interior, and the decision of the Solicitor of the Department of Interior dated April 17, 1964, affirming the aforesaid decision of the Land Office Manager sub nom. Union Oil Company of California, et al., 71 I.D. 169, are hereby set aside so far as they rejected Mineral Application Colorado 012327 for patent to the Oyler Placer Mining Claims Nos. 1-4 inclusive.

4. That Mineral Application Colorado 012327 for patent to the Oyler Placer Mining Claims Nos. 1-4 inclusive [197] is reinstated and remanded to the defendant for such further proceedings thereon as may be appropriate.

Dated at Denver, Colorado, this 1st day of March, 1967.

William E. Doyle
United States District Judge

The foregoing judgment is
approved as to form.

Maxwell Aley
Attorney for Plaintiffs.
Attorney for Defendant.

Filed March 1, 1967

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Notice of Appeal

Notice Is Hereby Given that the above-named defendant by its attorneys, Lawrence M. Henry, United States Attorney for the District of Colorado, and Richard T. Spriggs, Assistant United States Attorney for the District of Colorado, hereby appeals to the United States Court of Appeals for the Tenth Circuit from the final judgment entered herein by the United States District Court for the District of Colorado on the 1st day of March, 1967.

Dated April 26, 1967.

Lawrence M. Henry
United States Attorney for the
District of Colorado

By Richard T. Spriggs
Assistant United States Attorney
for the District of Colorado
Denver, Colorado

Filed April 26, 1967

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CLERK'S CERTIFICATE

I, G. Walter Bowman, Clerk of the United States District Court for the District of Colorado, do hereby certify the foregoing pages numbered one (1) to two hundred one (201) inclusive, are the original pleadings, Orders, papers, and exhibits, in a case lately pending in this Court, wherein, Penelope Chase Brown individually and as trustee, and The Oil Shale Corporation were plaintiffs, and Stewart L. Udall, Secretary of Interior was the defendant, in Civil Action No. 9202.

In Testimony to the above, I do hereunto sign my name and affix the seal of said Court at the City and County of Denver, in said District, this 3rd day of October, 1967.

(Seal)

G. Walter Bowman
Clerk

Filed May 16, 1968

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT
JANUARY 1969 TERM

No. 9581.

District Court No. 8680 Civil.

STEWART L. UDALL, Secretary of the Interior, APPELLANT

v.

THE OIL SHALE CORPORATION, et al, APPELLEES

No. 9582.

District Court No. 8685 Civil.

STEWART L. UDALL, Secretary of the Interior, APPELLANT

v.

JOSEPH B. UMPLEBY, et al, APPELLEES

No. 9583.

District Court No. 8691 Civil.

STEWART L. UDALL, Secretary of the Interior, APPELLANT

v.

BARNETTE T. NAPIER, et al, APPELLEES

No. 9584.

District Court No. 9202 Civil.

STEWART L. UDALL, Secretary of the Interior, APPELLANT,

v.

PENELOPE CHASE BROWN, et al, APPELLEES.

Appeals From The United States District Court
For The District of Colorado

Edmund B. Clark, Attorney, Department of Justice, Washington, D.C. (Harold S. Harrison, Acting Assistant

Attorney General, Lawrence M. Henry, United States Attorney, Roger P. Marquis and Thos. L. McKevitt, Attorneys, Department of Justice, with him on the Brief), for Appellant.

Fowler Hamilton, New York City, N. Y., for Appellees, The Oil Shale Corporation, et al, and Penelope Chase Brown, et al; Fred M. Winner, Denver, Colorado, for Appellees, Joseph B. Umpleby, et al; Karl Ranous, Denver, Colorado, for Appellees, Barnette T. Napier, et al (Tweedy, Mosley & Young, Denver, Colorado, and Cleary, Gottlieb, Steen & Hamilton, New York City, N. Y., with them on the Brief).

Before PHILLIPS, HILL and SETH, Circuit Judges.

SETH, Circuit Judge.

[3] These are appeals in four consolidated cases wherein the United States District Court for the District of Colorado entered judgments for the plaintiffs. These plaintiffs were asserting that the Secretary of the Interior had no authority to deny applications for patents for oil shale mining claims on the ground that assessment work had not been done, or on the ground that the claims had previously been cancelled by the Department for the same reason. The Secretary in Union Oil Company of California, 71 I.D. 169, and 72 I.D. 313, had taken the position that he could deny such applications under his construction of the opinions of the Supreme Court in two cases involving departmental cancellation of claims for failure to do assessment work. The issue on this appeal is whether the trial court was correct in holding that these two previous decisions were binding in the present case, and that they had held that the departmental adverse proceedings and the cancellation orders there litigated were void as were all others entered on the same ground.

In three of the cases the plaintiffs sought relief by mandamus, and in the fourth case a declaratory judgment was sought.

[4] There follows a brief summary of the history of the four groups of claims in the consolidated cases:

The Oil Shale Corporation Claims (*Case No. 9581*):

These claims were located in December 1919 and January 1920. Contest proceedings were started against these claims by the Land Office in 1927 as Nos. 11,757, 11,759, and 11,761, for failure to do assessment work. In 1928 the Commissioner entered a decision that the claims were void. The decision was entered upon the failure of the contestees to appear and to answer the departmental assertion that assessment work was not done for the years 1921-1927. All the claimants of this group of claims have not made application for patents and were not parties in Union Oil Company of California, 71 I.D. 169.

Umpleby Claims (*Case No. 9582*):

These oil shale claims were located in 1918, were contested by the Land Office in No. 12,029 in 1929, and declared to be invalid and cancelled for failure to perform annual assessment work. Recently the claimants made application for patents which were rejected by the Secretary in Union Oil Company of California, supra.

Napier Claims (*Case No. 9583*):

These claims were located in 1918, were contested by the Land Office in No. 12,972 in 1931, and declared to be invalid and cancelled for failure to do assessment work. Patent applications for these claims were rejected by the Secretary in Union Oil Company of California, supra.

Brown Claims or Oyler Claims (*Case No. 9584*):

These claims were located in 1916, and in 1929 contested by the Land Office in No. 12,039, and declared invalid and cancelled for failure to do [5] assessment work. Patent applications were rejected by the Secretary in Union Oil Company of California, supra.

When these placer claims were located the federal mining laws provided that upon a discovery of valuble mineral deposits upon the public domain, a mining claim could be established simply by marking the location so that its boundaries could be easily followed. The mining districts and the states added some additional requirements, but it was not necessary to secure the consent of any federal officials nor to even advise them of the location. Thus the discoverer could himself take steps immediately to protect his find. This was, of course, a practical and effective method for the prospector and miner, and it served to develop the mineral resources as was intended by Congress.

The markings at the location and state required notices served to advise other miners of the claim when they would go no the same ground. After the location was made it was required that the claimant perform a certain amount of work each year to demonstrate that he was holding it in good faith and to further advise others interested in [6] the same ground that the claim was being asserted. Chambers v. Harrington, 111 U.S. 350. This assessment work was a requirement in virtually all of the mining districts by rule before the first federal statute on the subject was enacted. O'Reilly v. Campbell, 116 U.S. 418. Under the rules and the statute, if the work was not performed as and when required, the ground was then open to location by another person as if no prior claim had been staked. However, if no stranger so relocated the ground, the initial claimant could, after any failure to perform the work, resume assessment work and thereby the claim would not be subject to location by others. Belk v. Meagher, 104 U.S. 279. The assessment work year has been changed by Congress from time to time, and it has also provided moratorio for assessment work.

The basic federal requirements, the staking, and the assessment work were all acts relating to the ground itself and to create some condition which could be observed by persons seeking to locate claims in the same area. It was an inter-miner-prospector matter, and the federal government was not initially involved. The claims could, of course, be held indefinitely against others, and

the [7] Government, and be mined without doing more than making a valid location and performing the required assessment work. Upon the valid location, a possessory title passed from the United States to the locator which was a property right universally recognized. A patent could thereafter be sought by making application to the Land Office, but this was not a required step. The states in various ways supplemented the methods of marking and added a variety of notice, recording or filing requirements.

As to the assessment work aspect of claims made at the times these in question were made, it is apparent that the issue as to whether the work had been performed was a matter between rival claimants. It was precipitated by an overstaking and the resultant dispute as to whether the ground was then open for location. The issue was decided by the courts between the individuals concerned. 17 Stat. 93; see the older Departmental Regulations, 37 L.D. 757 (1909). Cameron v. United States, 252 U.S. 450. The current Regulations also expressly so provide. 43 C.F.R. § 3420.4.

It is important to consider the claims in question and the assessment work problems in this context of [8] practice, district rules, and statutes alluded to above. The Federal Mining Leasing Act of 1920 (30 U.S.C. § 193, 41 Stat. 451) removed a few minerals including oil shale from the traditional method of location, and it must also be examined in this setting. As to those minerals not included in the Act, the traditional method generally prevails today. See Brennan v. Udall, 379 F. 2d 803 (10th Cir.).

When the Mineral Leasing Act became effective, no new mining locations could be made for oil shale as there was substituted a leasing method. Thus those locators who already had made valid locations before the Act were not thereafter faced with the possibility of other locators overstaking their claims for oil shale if assessment work was not performed. Thus the assessment work requirement on pre-Mineral Leasing Act oil shale claims could not be "enforced" or tested by the acts of

a second oil shale locator versus a prior locator. The pre-Act claims were thus placed in a unique position.

The General Land Office soon after the passage of the Mineral Leasing Act undertook an ambitious program to eliminate the pre-Mineral Leasing Act oil shale claims upon [9] which assessment work had not been done. This program included the claims herein issue, and they were all cancelled by departmental action following contest proceedings directed against them for a failure to do assessment work. The program led to litigation to test the authority of the Department to cancel claims for such a reason. This culminated in Wilbur v. Krushnic, 280 U.S. 306, decided by the Supreme Court in 1930, and in Ickes v. Virginia-Colorado Development Corp., 295 U.S. 639, in 1935. The claims in issue were cancelled before the decision in Virginia-Colorado.

It would not seem necessary to analyze at any length the two cases—Krushnic and Virginia-Colorado. They are treated by the trial court in its opinion at 261 F. Supp. 954, at 966, and in the literature on the subject of assessment work. 2 American Law of Mining, Title VII, § 7.1. It is sufficient to say that these cases held that the doctrine outlined above relative to assessment work and who could challenge locations for failure to do such work was not changed by the Mineral Leasing Act. The Court clearly held that the Department (Secretary) had no power or authority to cancel claims solely on the ground that [10] the assessment work had not been done.

At the time of the Supreme Court decisions cited above, the administrative cancellation proceedings in the Land Office had, of course, progressed to various stages in different proceedings. Thus some proceedings had concluded and orders had been entered cancelling the claims, while in others the proceedings were still in progress. But, as indicated above, cancellation orders had been entered in the contest proceedings directed against the claims here in issue. In 1935, following the Virginia-Colorado opinion, the Secretary in his decision, The Shale Oil Company, at 55 I.D. 287, stated that the adverse proceedings and the decision of the Commissioner can-

celling certain oil shale claims in the case before him for failure to perform assessment work were void. The decision for the Secretary said of the Virginia-Colorado case:

> "In view of this opinion of the court, the adverse proceedings and decision of the Commissioner therein in the instant case must be held as without authority of law and void. The above-mentioned decision of the Department in the *Virginia-Colorado Development Corporation* case and the instructions of June 17, 1930, are hereby recalled and vacated. The above-mentioned decisions in the cases of *Francis D. Weaver* and *Federal Oil Shale Company* and other Departmental decisions in conflict with this [11] decision are hereby overruled. The Commissioner's decision is reversed and the record in the case remanded with instructions to reinstate the application and entry *in toto* and dispose of the same unaffected by the default in the performance of assessment labor, and if all else is found regular, to clear-list the application for patent."

The Department for many years thereafter, as demonstrated by the record in these caes, adopted a policy that its prior cancellations and proceedings taken to cancel oil shale claims for failure to perform assessment work were invalid or were void. The expression of this policy continued until about the time of the decision in Union Oil of California, 71 I.D. 169, and 73 I.D. 313, which gave rise to this litigation.

It is well at this point to refer to the somewhat older (1920) case of Cameron v. United States, 252 U.S. 450. There the Supreme Court upheld the right of the Land Office to challenge mining claims on the ground that a discovery had in fact not been made. The fact of discovery was and is the basic statutory fact required to support any mining claim. It has been referred to as the source of title and what segregates the claimed ground from the public domain. It must have taken place before any title passes from the Government to the claimant. [12] The Court held in Cameron that the Land Office

could challenge the mining claims there concerned as to this fact of discovery, but this was the extent of the decision. The claims there sought to be established were so located as to cover the Bright Angel Trail leading into the Grand Canyon. The issue was discovery and not assessment work. Also in Best v. Humboldt Mining Co., 371 U.S. 334, the Court had before it in general terms a case similar to Cameron, supra, and expressed no new concepts in the authority of the Secretary. See also United States v. Coleman, 390 U.S. 599.

The Government on this appeal would present the issue very broadly, as being the authority of the Secretary of the Interior as to entries and locations on the public land. If the question is so broadly stated there can be found any number of decisions where reference is made to the wide extent of his duties as to the public domain. See Boesche v. Udall, 373 U.S. 472. However the issue cannot here be put in such broad terms. Instead the issue must be limited to the effect of the Krushnic and Virginia-Colorado cases upon the prior departmental cancellations of claims for failure to do assessment work. [13] There are some variations on this question and some related problems, but it is the basic issue.

It must be recognized that the departmental decision in Union Oil Company of California, supra, represents a reversal of the expressed policy of the Department which had prevailed since the Virginia-Colorado decision and The Shale Oil Company case, 55 I.D. 287, both in 1935. The record shows that this policy was expressed in correspondence, public statements, annual reports, and in official action. This official action includes the patenting of a substantial number of oil shale claims during this interval which had been previously cancelled by the Department for failure to do assessment work. This reversal of policy also represents a determination by the Secretary to have the Krushnic and Virginia-Colorado cases revisited. The Government in its brief states that the subject matter of this litigation is the same that was before the Secretary thirty-five years ago in proceedings leading to the Krushnic and Virginia-Colorado cases.

It is apparent that the private "enforcement" of the assessment work requirement through the overstaking by others of the ground covered by prior claims on which the [14] work had not been done was completely thwarted by the intervention of the Mineral Leasing Act as to competing locations for oil shale. The old claims were thus sheltered by the Act. However the ground could have been relocated by others for non-Mineral Leasing Act minerals had they been discovered (ignoring withdrawal problems). With the removal of relocation as the method to make the non-worked locations available, the Department undertook its campaign to cancel which was halted by the Krushnic and Virginia-Colorado cases, and has here again resumed its efforts. The Secretary in the Virginia-Colorado case argued the effect of the Act described above. The Government in its reply brief in the appeal before us states that the decision in Virginia-Colorado is "wrong" but suggests that since we are bound by it, "it should be confined to its exact facts . . . ."

We find no change in the authority of the Secretary since the Supreme Court decisions referred to above. There has been some relatively minor statutory change but it does not affect this issue. The Supreme Court held in Virginia-Colorado that the Secretary was acting outside his statutory authority when he cancelled the claims for the reason [15] he did. The Court said: "We think that the Department's challenge, its adverse proceedings, and the decision set forth in the bill went beyond the authority conferred by law." It was a clear and direct holding, and it followed the Krushnic decision and, of equal importance, it followed Cameron v. United States, 252 U.S. 450. The decision must be taken by us to hold that the Secretary was without power or authority under the laws to bring the adverse proceedings on the ground it did, and to so cancel the claims. This in the administrative area must be taken to mean his actions were void and of no legal effect. They were beyond his authority conferred by law, and this is the sole source of his power. Pan American Petroleum Corp. v. Pierson, 284 F.2d 649 (10th Cir.). The Secretary so understood

as indicated in the departmental decision in The Shale Oil Co., 55 I.D. 287, and by his later patenting of other cancelled claims. If his acts are so treated, the cancellations of the claims here concerned were of no effect and they stand as if no departmental action to cancel had been taken. Gabbs Exploration Co. v. Udall, 315 F.2d 37 (D.C.Cir.), may have arrived at a somewhat different conclusion, but it relied upon an abandonment assertion. [16] It does not make much difference how this absence of administrative power is characterized, whether it is called lack of jurisdiction as the term is used with reference to the courts, or whether it is a lack of statutory power or authority, or lack of a duty covering the particular action attempted.

In West v. Standard Oil Co., 278 U.S. 200, the Court had before it an action against the Secretary of the Interior to enjoin proceedings in a local land office ordered by him to determine whether certain lands were known to be mineral at a certain time, and thus to attempt to determine whether title passed to the state under the Act of March 3, 1853. The Court found that the Secretary had no "affirmative duty" to the state or to a claimant. The Court said that Congress did give the Secretary the "power" to pass generally on the right of the state to the land. The Court said:

> "The broad power of control and supervision conferred upon the Secretary 'does not clothe him with any discretion to enlarge or curtail the rights of the grantee, nor to substitute his judgment for the will of Congress as manifested in the granting act.' Payne v. Central Pacific Railway Co., 255 U.S. 228, 236."

The Court concluded that the prior Secretary had acted [17] without authority, and in substance that his order was of no effect. The Court placed the determination of power on the finding of a "duty." Under the circumstances before us the Court had also found no duty within the statutes. It is reasonable to conclude from the West opinion that the action of the Secretary there was void as it was here.

Thus we must hold, as did the trial court, that under the prevailing decisional and statutory law, the initial administrative proceedings as such and also the cancellation of the claims here in issue were of no effect. The Supreme Court decisions were handed down some thirty years ago and Congress has not extended the power of the Secretary as to this particular matter as well it could because it has been seriously concerned with oil shale development. In any event, if it was then deficient the acts then taken were void. As to whether the Secretary can now refuse to patent by reason of gaps in annual assessment work we feel bound by the Supreme Court's decisions and by the absence of Congressional action. The Secretary must follow those decisions on this point.

The Government here argues in effect that the Secretary has all the powers mentioned in the Constitution [18] relating to public lands, but this cannot be. These powers are not in the Secretary, but are vested in Congress and he has what the statutes provide that he have and no more.

It must be borne in mind that these proceedings, derived as they are in part from the Union Oil of California case, are concerned only with the annual assessment work problem, and not with the many other hurdles which must be crossed by a claimant on the way to patent.

The Supreme Court cases removed the issue with which we are here concerned from the administrative arena and decided, and said expressly, that the basic power and authority of the Secretary was lacking as to his cancellations; and equally important was lacking as to his challenge to the claims and his adverse proceedings for the purpose sought. When such fundamental propositions were decided it made no difference to what extent the administrative action in the decided case had progressed or in any other like contest already disposed of. It further could make no difference whether the claimants took any further administrative action or not because what had gone before was void. The Secretary would here place the parties back in the various stages

of the administrative proceedings [19] where they were when the Department was stopped by the Virginia-Colorado case, and then start the machinery again and apply the doctrines of exhaustion of administrative remedies, etc. But, as stated above, the Supreme Court did more than interrupt the proceedings; it completely invalidated them as if no contests had commenced.

The Department proceeded initially on the proper course following the decisions as is shown in the record on this appeal. In many subsequent proceedings concerning other claims cancelled as these before us were, it ignored its prior administrative action; and it received applications to patent such claims, and patents were issued.

The land status in the area concerned has become somewhat complicated in that surface entries were received and processed; the Taylor Grazing Act has been administered in the same area as these and other claims of similar status; oil and gas leases have issued, and other entries have been processed by the Department. The Secretary advances this problem as an argument to support its refusal to patent, but these complications are not essentially different than in any area where there are a considerable number of unpatented mining claims. This is one of [20] the Secretary's basic problems in administering lands where the general mining laws are applicable, and all the data as to the locations and claims may not be in the records of the Land Office. This involved land status is not the doing of the mining claimants, as the Department has proceeded to receive these other entries and to process them regardless of the unpatented claims. It is not a question of laches on either side. Time and the pressure for land utilization have complicated the land use on the one hand and have added administrative problems on the other. The Secretary is certainly equal to solving these problems as they are everywhere present.

These cases on appeal are like a voice out of the past with mining locations dating from 1918, with the clearly established legal propositions directly applicable to them and the matter thought to be at rest, but here we are

some thirty or thirty-five years later and having progressed, or at least moved, somewhat out of the pick and shovel era faced with the same issues as to the same claims. It is, as stated above, the Virginia-Colorado issues and era revisited.

The appellees urge that we consider a contention [21] presented to the trial court that the Department cannot retroactively change a "rule." However it appears that the problem is a more fundamental one than rule making, and is instead a reluctance by the Secretary to continue to follow the Supreme Court's decisions as his predecessors have before, and to seek a new interpretation or to ultimately have the Court modify them. This issue we have considered above and we need not treat this as a separate matter.

The Government urges that the same issues are present in all four cases. The relief sought is basically in the nature of mandamus and directed to the Secretary's action in the Union Oil case. 28 U.S.C. § 1361 gives the District Court jurisdiction in these proceedings. The Act of 1962 subjected the officers and employees of the Government to such actions in all the United States District Courts. The nature of these actions was defined by this court in Prairie Band of Pottawatomie Tribe of Indians v. Udall, 355 F.2d 364 (10th Cir.). See also Smith v. United States, 333 F.2d 70 (10th Cir.); Motah v. United States, 402 F.2d 1 (10th Cir.); Pan American Petroleum Corp. v. Pierson, 284 F.2d 649 (10th Cir.); Couch v. Udall, No. [22] 9834, December 4, 1968, —— F.2d —— (10th Cir.). As the legislative history indicates the intent was only to broaden the venue provisions of the prior Act. U. S. Code Cong. & Ad. News, 87th Cong., 2d Sess., page 2785.

For the reasons indicated above we must hold that the Krushnic and Virginia-Colorado decisions of the Supreme Court control. These decisions must also be taken to mean that the prior cancellations for failure to do assessment work were void and are still void. Thus the Secretary was again without authority to attempt to base his actions on the same ground.

AFFIRMED.

No. 9581

STEWART L. UDALL, SECRETARY OF THE INTERIOR, APPELLANT

v.

THE OIL SHALE CORPORATION AND ENERGY RESOURCES TECHNOLOGY LAND, INCORPORATED, APPELLEES

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO

Before Honorable ORIE L. PHILLIPS, Honorable DELMAS C. HILL and Honorable OLIVER SETH, Circuit Judges

This cause came on to be heard on the transcript of the record from the United States District Court for the District of Colorado and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this court that the judgment of the said district court in this cause be and the same is hereby affirmed.

WILLIAM L. WHITTAKER,
Clerk.

By GLADYS E. HOBBS,
Deputy Clerk.

JANUARY TERM, FEBRUARY 4TH, 1969

Before Honorable Orie L. Phillips, Honorable Delmas C. Hill and Honorable Oliver Seth, Circuit Judges

Appeal from the United States District Court for the District of Colorado

9582

STEWART L. UDALL, SECRETARY OF THE INTERIOR, APPELLANT

v.

JOSEPH B. UMPLEBY AND WASATCH DEVELOPMENT CO., APPELLEES

This cause came on to be heard on the transcript of the record from the United States District Court for the District of Colorado and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this court that the judgment of the said district court in this cause be and the same is hereby affirmed.

WILLIAM L. WHITTAKER,
Clerk.

By GLADYS E. HOBBS,
Deputy Clerk.

JANUARY TERM, FEBRUARY 4TH, 1969

Before Honorable Orie L. Phillips, Honorable Delmas C. Hill and Honorable Oliver Seth, Circuit Judges

Appeal from the United States District Court for the District of Colorado

9583

STEWART L. UDALL, SECRETARY OF THE INTERIOR, APPELLANT

v.

BARNETTE T. NAPIER, GRACE A. SAVAGE, JOAN L. SAVAGE, MAUDE B. FARNUM, ST. CLAIR NAPIER CATLIN, WILLIAM H. FARNUM, JR., JOHN R. FARNUM, JOHN W. SAVAGE AND NEIL S. MINCER, APPELLEES

This cause came on to be heard on the transcript of the record from the United States District Court for the District of Colorado and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this court that the judgment of the said district court in this cause be and the same is hereby affirmed.

WILLIAM L. WHITTAKER,
Clerk.

By GLADYS E. HOBBS,
Deputy Clerk.

JANUARY TERM, FEBRUARY 4TH, 1969

Before Honorable Orie L. Phillips, Honorable Delmas C. Hill and Honorable Oliver Seth

Appeal from the United States District Court for the District of Colorado

9584

STEWART L. UDALL, SECRETARY OF THE INTERIOR, APPELLANT

v.

PENELOPE CHASE BROWN, INDIVIDUALLY AND AS TRUSTEE, AND THE OIL SHALE CORPORATION, APPELLEE

This cause came on to be heard on the transcript of the record from the United States District Court for the District of Colorado and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this court that the judgment of the said district court in this cause be and the same is hereby affirmed.

WILLIAM L. WHITTAKER,
Clerk.

By GLADYS E. HOBBS,
Deputy Clerk.

SUPREME COURT OF THE UNITED STATES

No. 221, October Term, 1969

WALTER J. HICKEL, SECRETARY OF THE INTERIOR, PETITIONER

v.

THE OIL SHALE CORPORATION, ET AL.

ORDER ALLOWING CERTIORARI—Filed October 13, 1969

The petition herein for a writ of certiorari to the United States Court of Appeals for the Tenth Circuit is granted, and the case is placed on the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice White and Mr. Justice Marshall took no part in the consideration or decision of this petition.

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